

SEC4

Peter Heinke
11/22/2019

<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 4 U.S. SECURITIES AND EXCHANGE) 5 COMMISSION,) 6 Plaintiff,) Case No. 7) 19-cv-5244(AKH) 8 v.) 9 KIK INTERACTIVE INC.) 10) 11 Defendant.) 12 13 VIDEOTAPED DEPOSITION OF PETER HEINKE 14 (Volume 1, pages 1 - 212 inclusive) 15 Friday, November 22, 2019 16 8:57 a.m. 17 Taken at: 18 U.S. Securities & Exchange Commission 19 100 F Street, Northeast 20 Washington, D.C. 20549 21 22 Reported by: 23 Michele E. Eddy 24 (RPR, CRR, CRI, Participating Member of NCRA) 25 JOB No. 191122ERS</p> <p style="text-align: center;">1</p>	<p>1 INDEX 2 Witness: Page 3 Peter Heinke (Volume 1) 4 Examination by Mr. Mendel 16 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">3</p>
<p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFF: 3 U.S. SECURITIES AND EXCHANGE COMMISSION 4 100 F Street NE 5 Washington, DC 20549-5977 6 7 Telephone: (202) 551 4418 (Mendel) 8 9 BY: MR. DAVID S. MENDEL, Esq. 10 MR. STEPHAN J. SCHLEGELMILCH, Esq. 11 mendeld@sec.gov 12 schlegelmilchs@sec.gov 13 14 On behalf of Defendant: 15 COOLEY LLP 16 500 Boylston Street 17 Boston, MA 02116-3736 18 19 Telephone: (617) 937 2480 (Cadigan) 20 Facsimile: (617) 937 2400 (Cadigan) 21 BY: MR. LUKE T. CADIGAN, Esq. 22 MR. MICHAEL E. WELSH, Esq. 23 lcadigan@cooley.com 24 mwelsh@cooley.com 25 AND 26 COOLEY LLP 27 55 Hudson Yards 28 New York, NY 10001-2157 29 Telephone: (212) 479-6784 30 BY: MR. DANIEL P. ROY, III, Esq. 31 droy@cooley.com 32 33 ALSO PRESENT: Gene Aronoff, Videographer</p> <p style="text-align: center;">2</p>	<p>1 EXHIBIT INDEX 2 No. Description Page 3 SEC Exhibit 4 Email dated 2-16-17 from Ted 62 4 Livingston to Kik Board and 5 Derek Lebert, with attachment; 6 KIK_00026450 - 6494 7 SEC Exhibit 6 CoinFund document titled, 70 8 "Token Integration Research 9 and Proposed Economics," dated 10 3-21-17; 11 COINFUND007691 - 7747 12 SEC Exhibit 7 Board Call dated 5-23-17; 94 13 KIK_00106868 - 6898 14 SEC Exhibit 10 Email dated 5-18-17 from Eran 15 15 Ben Ari to Ted Livingston, 16 Nancy Wojtas, and the 17 Leadership Team; 18 KIK_00103093 - 3097 19 SEC Exhibit 12 Kin position paper titled, 126 20 "Kin: a decentralized 21 ecosystem of digital services 22 for daily life," dated May 23 2017; KIK000001 - 28 24 25</p> <p style="text-align: center;">4</p>

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5	Interactive Inc.;	5	distribution event starts today,"
6	KIK_00078790 - 8791	6	dated 9-12-17
7	SEC Exhibit 47 Email chain; most recent email 138	7	SEC Exhibit 61 Document titled, "Kik raises 185
8	dated 6-15-17 from Peter Heinke	8	nearly US \$100 million in Kin
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12	to Dan Morehead, etc.;	12	for Kin Ecosystem Foundation;
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20	SEC Exhibit 51 Email chain; most email dated 15	20	SEC Exhibit 65 Agency Agreement between Kin 15
21	6-28-17 from Peter Heinke to	21	Ecosystem Foundation and Kik
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23	KIK_00117728 - 7730	23	KIK_00147211 - 7218
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<p>1 EXHIBIT INDEX CONTINUED</p> <p>2</p> <p>3 No. Description Page</p> <p>4 SEC Exhibit 66 Document titled "Deposition of 29</p> <p>5 Peter Heinke on November 22,</p> <p>6 2019, Index of Exhibits</p> <p>7 Previously Marked in</p> <p>8 Investigative Testimony"</p> <p>9 SEC Exhibit 67 Email dated 7-18-17 from Angela 151</p> <p>10 Watkins to Peter Heinke;</p> <p>11 KIK_00115681 - 5686</p> <p>12 SEC Exhibit 68 Email chain; most recent email 155</p> <p>13 dated 8-3-17 from Katie Tonin to</p> <p>14 Kik Board, Angela Baiamonte,</p> <p>15 Annemarie Palmer, Cherie Bauman,</p> <p>16 Christie Locke, Gillian Arca,</p> <p>17 Sam, Teresa Pecce, Nancy Wojtas,</p> <p>18 and Ted Livingston; attached</p> <p>19 PowerPoint; USV0016091 - 6118</p> <p>20 SEC Exhibit 69 Email chain; most recent email 156</p> <p>21 dated 9-17-17 from Chris Cameron</p> <p>22 to Peter Heinke;</p> <p>23 KIK_00116494 - 6498</p> <p>24</p> <p>25</p> <p>13</p>	<p>1 (Plaintiff's Exhibits 4, 6, 7, 10, 12, 16,</p> <p>2 and 23 through 65 were previously marked before</p> <p>3 going on the record.)</p> <p>4 (On the record at 8:57 a.m.)</p> <p>5 THE VIDEOGRAPHER: Good morning. This</p> <p>6 is video number 1 of the video deposition of Peter</p> <p>7 Heinke taken by plaintiff in the matter of United</p> <p>8 States Securities and Exchange Commission versus</p> <p>9 Kik Interactive, pending before the United States</p> <p>10 District Court for the Southern District of New</p> <p>11 York, Case Number 1:19-cv-05244.</p> <p>12 This deposition is being held at the</p> <p>13 United States Securities and Exchange Commission</p> <p>14 on November 22nd, 2019. The time on the video</p> <p>15 screen is 8:58 a.m.</p> <p>16 My name is Gene Aronoff, and I am the</p> <p>17 legal video specialist from the firm of Gradillas</p> <p>18 Court Reporters, Inc. The court reporter today is</p> <p>19 Michele Eddy, in association with Gradillas Court</p> <p>20 Reporters, Inc., located at 400 North Brand</p> <p>21 Boulevard, Suite 950, Glendale, California.</p> <p>22 For the record, will counsel now please</p> <p>23 introduce themselves and whom they represent.</p> <p>24 MR. MENDEL: David Mendel for plaintiff,</p> <p>25 United States Securities and Exchange Commission.</p> <p>15</p>
<p>1 EXHIBIT INDEX CONTINUED</p> <p>2</p> <p>3 No. Description Page</p> <p>4 SEC Exhibit 70 Email dated 10-30-17 from 160</p> <p>5 Brandon Brunet to Kik Board;</p> <p>6 USV0015214;</p> <p>7 with attachment</p> <p>8 Bates 15221 - 5249</p> <p>9 SEC Exhibit 71 Email chain; most recent email 192</p> <p>10 dated 12-14-17 from Chris Cameron</p> <p>11 to William Raduchel and Peter</p> <p>12 Heinke; WR-Kik-00000229 - 230</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>14</p>	<p>1 MR. SCHLEGELMILCH: Stephan</p> <p>2 Schlegelmilch for the Commission.</p> <p>3 MR. CADIGAN: Luke Cadigan for the</p> <p>4 defendant Kik Interactive.</p> <p>5 MR. WELSH: Michael Welsh for Kik</p> <p>6 Interactive.</p> <p>7 MR. ROY: Daniel Roy for Kik</p> <p>8 Interactive.</p> <p>9 THE VIDEOGRAPHER: Will the court</p> <p>10 reporter please administer the oath.</p> <p>11 - - -</p> <p>12 PETER HEINKE,</p> <p>13 having been duly sworn, testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. MENDEL:</p> <p>16 Q Good morning.</p> <p>17 A Good morning.</p> <p>18 Q Could you please state your full name</p> <p>19 and spell it.</p> <p>20 A Peter Heinke, H-E-I-N-K-E.</p> <p>21 Q And my name, as I mentioned, is David</p> <p>22 Mendel. I represent the SEC in a lawsuit against</p> <p>23 Kik Interactive, Inc., and this is a deposition</p> <p>24 pursuant to the Federal Rules of Civil Procedure</p> <p>25 in that action.</p> <p>16</p>

1 Can you state your home address, please.

2 A Yes. It's [REDACTED]

3 [REDACTED]
4 Q Do you have any other personal
5 addresses?

6 A No. There's a box office address for
7 the local mailing, which is [REDACTED]

8 [REDACTED]
9 Q Just to clarify, that's in Canada,
10 correct?

11 A Yes, sorry.

12 Q You don't have any personal addresses in
13 the United States?

14 A No.

15 MR. MENDEL: Could I also clarify for
16 the record, is counsel here today --

17 MR. CADIGAN: Oh, I'm sorry. Yes, we
18 are representing Mr. Heinke today as well.

19 MR. MENDEL: Thank you.

20 BY MR. MENDEL:

21 Q So I would like to go over some
22 procedures that we typically follow for
23 depositions.

24 A Okay.

25 Q You probably heard them before, but I'll

17

1 just repeat them. As you know, we have a court
2 reporter who's transcribing the deposition. And
3 so it will be a much better transcript if we don't
4 talk over each other. So please let me finish my
5 question before you start your answer. I know
6 sometimes it's tempting to jump in, but try to let
7 me get my question out first.

8 Please give audible responses instead of
9 just a body gesture or a nod of the head. If you
10 don't understand a question, by all means, let me
11 know and I'll try to rephrase it so that it's more
12 understandable.

13 We'll take some periodic breaks. We'll
14 take one midmorning, I imagine, but if you need a
15 break for any other reason, just feel free to let
16 your counsel know or let me know, and you might
17 want to request an escort because we try to finish
18 answering the question that's pending before we
19 move to a break.

20 A Okay, yes.

21 Q You understand that you're under oath?

22 A Yes.

23 Q And are you taking any medication today
24 that could affect your memory?

25 A No.

18

1 Q Is there any reason you can't give full
2 and complete testimony today?

3 A No.

4 (Plaintiff's Exhibit 19 was marked for
5 identification.)

6 BY MR. MENDEL:

7 Q Mr. Heinke, I've given you what's been
8 marked Deposition Exhibit 19. Have you seen this
9 before?

10 A Not that I recall.

11 Q Okay.

12 Do you understand that you're appearing
13 today in the deposition pursuant to a subpoena?

14 A Yes.

15 Q Okay. I'll take that back.

16 Well, one more question. Does
17 Exhibit 19 look like a subpoena to you?

18 A Yes, it does.

19 Q And it has your name on it, right?

20 A Yes, it does.

21 Q Very good. Thank you.

22 A I'm sorry, where is --

23 Q Do you want to look at it some more?

24 A I just want to look where my name is.

25 Q It says at the top "Subpoena to Testify

19

1 at a Deposition in a Civil Action," below that,
2 "Peter Heinke."

3 A Oh, right, sorry, I didn't see it there.

4 Q No problem.

5 A Thank you.

6 Q Mr. Heinke, do you recall giving sworn
7 testimony to the SEC during its investigation that
8 led to this lawsuit?

9 A Yes, I do.

10 Q That testimony took place on September
11 20th and 21st in 2018. Does that sound right?

12 A Yes, that does.

13 (Plaintiff's Exhibit 20 was marked for
14 identification.)

15 BY MR. MENDEL:

16 Q I've provided you, Mr. Heinke, with
17 what's been marked as Deposition Exhibit 20.

18 Just before the start of your testimony
19 last September in 2018, on the first morning, do
20 you recall being provided with a copy of what's
21 now been marked Deposition Exhibit 20?

22 A Yes.

23 Q You took the time to read it, right?

24 A At that time?

25 Q At that time.

20

<p>1 A Yes.</p> <p>2 Q This is what we call a Form 1662.</p> <p>3 That's in the lower left-hand corner of the</p> <p>4 document. Do you see SEC 1662 on it?</p> <p>5 A In the corner, yes.</p> <p>6 Q Then going up to the first section at</p> <p>7 the top of the first page, "False Statements and</p> <p>8 Documents," this form provides warnings about not</p> <p>9 being truthful during your testimony to the SEC,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q I'll take that back.</p> <p>13 At the start of your investigative</p> <p>14 testimony back in September 2018, you swore an</p> <p>15 oath, correct?</p> <p>16 A Yes.</p> <p>17 Q What did you understand the oath to</p> <p>18 require you to do?</p> <p>19 A To tell the truth.</p> <p>20 Q That's what you did, right?</p> <p>21 A Yes, I did.</p> <p>22 Q The SEC proceeded to ask you questions</p> <p>23 during the testimony?</p> <p>24 A Yes, they did.</p> <p>25 Q And when you answered the SEC's</p> <p style="text-align: center;">21</p>	<p>1 A Yes, it was.</p> <p>2 Q And those attorneys representing Kik, at</p> <p>3 the time they also represented you personally; is</p> <p>4 that right?</p> <p>5 A That's correct.</p> <p>6 Q Did the attorneys representing Kik</p> <p>7 attend all of your testimony on those days?</p> <p>8 A Yes, they did.</p> <p>9 Q During the testimony the attorneys for</p> <p>10 Kik gave you advice with regard to questions that</p> <p>11 potentially involved the attorney-client</p> <p>12 privilege, right?</p> <p>13 A Yes, they did.</p> <p>14 Q And you followed that advice?</p> <p>15 A Yes, I did.</p> <p>16 Q Do you remember, at the end of the</p> <p>17 second day of testimony, being asked whether you</p> <p>18 would like to clarify or add to any of your</p> <p>19 answers?</p> <p>20 A I believe so, yes.</p> <p>21 Q You answered that you didn't have</p> <p>22 anything, right?</p> <p>23 A That's correct.</p> <p>24 Q Similarly, do you remember, at the end</p> <p>25 of the second day of testimony, that Kik's lawyers</p> <p style="text-align: center;">23</p>
<p>1 questions, you told the truth?</p> <p>2 A Yes, I did.</p> <p>3 Q On September 20th and 21st, 2018, did</p> <p>4 you tell the entire truth?</p> <p>5 A Yes, I did.</p> <p>6 Q Was there ever a moment during your</p> <p>7 testimony when you thought that you were not</p> <p>8 telling the truth?</p> <p>9 A No. As far as my recollection was at</p> <p>10 the time, I was telling the truth.</p> <p>11 Q Very good.</p> <p>12 On September 20th and 21st, 2018, were</p> <p>13 you under the influence of drugs or alcohol?</p> <p>14 A No, I wasn't.</p> <p>15 Q And there was a court reporter present,</p> <p>16 right, just like today?</p> <p>17 A Yes, there was.</p> <p>18 Q And your testimony was videotaped, just</p> <p>19 like today, correct?</p> <p>20 A Yes, it was.</p> <p>21 Q That testimony in September of 2018,</p> <p>22 that was also attended by attorneys for Kik</p> <p>23 Interactive, Inc., right?</p> <p>24 A Yes, it was.</p> <p>25 Q And that's the defendant in this case.</p> <p style="text-align: center;">22</p>	<p>1 were asked whether they had any questions for you</p> <p>2 at the time, right?</p> <p>3 A Yes.</p> <p>4 Q Kik's lawyers responded that they did</p> <p>5 not?</p> <p>6 A That's what I recall, yes.</p> <p>7 Q Have you read any of the transcripts</p> <p>8 from your investigative testimony?</p> <p>9 A Yes, I went over them.</p> <p>10 Q When did you read them?</p> <p>11 A In the last week.</p> <p>12 Q Did you read all of them?</p> <p>13 A I went through most of the pages, yes.</p> <p>14 (Plaintiff's Exhibit 21 and Plaintiff's</p> <p>15 Exhibit 22 were marked for</p> <p>16 identification.)</p> <p>17 MR. CADIGAN: Dave, we're still</p> <p>18 continuing to stipulate that all objections other</p> <p>19 than as to form are reserved, right?</p> <p>20 MR. MENDEL: Yes.</p> <p>21 MR. CADIGAN: Okay.</p> <p>22 Just, actually, for the record, that</p> <p>23 will pertain to all depositions going forward in</p> <p>24 this matter; is that right?</p> <p>25 MR. MENDEL: Sure.</p> <p style="text-align: center;">24</p>

<p>1 MR. CADIGAN: So we don't have to keep 2 putting it on the record. 3 MR. MENDEL: Unless we say otherwise. 4 MR. CADIGAN: Yes, right, right, right. 5 MR. MENDEL: Sounds good to me. 6 BY MR. MENDEL: 7 Q So I've provided you, Mr. Heinke, with 8 what's been marked as Exhibit 21 and 22. Exhibit 9 21 indicates that it's a transcript of you on 10 September 20th, 2018, and Exhibit 22 reflects that 11 it's a transcript from your testimony from 12 September 21st, 2018. 13 Does that look right to you? 14 A Yes, it does. 15 Q Do you recognize Exhibits 21 and 22 as 16 transcripts that you reviewed in preparation for 17 your testimony today? 18 A Yes, I do. 19 Q I'm sorry if I asked you this. How long 20 did you spend reviewing? 21 A I can't really recall. Probably about 22 five, six hours. 23 Q When you reviewed the transcripts, did 24 you notice anything in them that seemed incorrect? 25 A No. In general, they were pretty</p> <p>25</p>	<p>1 Q If I were to ask you the same questions 2 today that I asked you on September 20th -- I'll 3 break that down. 4 If I were to ask you the same questions 5 today that I asked you on September 20th, 2018, 6 would you give the same answers? 7 MR. CADIGAN: Objection. 8 A Just as far as I could recall. I mean, 9 it's been over a year ago so, I mean, there may be 10 some nuances or changes to them, but in general, 11 yes. 12 Q Based on what you reviewed before your 13 testimony, correct? 14 A Right. 15 Q And based on what you can remember now? 16 A Yes. 17 Q Very well. 18 The same question for the second day. 19 If I were to ask you the same questions today that 20 I asked you on September 21st, 2018, your second 21 day of testimony, would you give the same answers? 22 MR. CADIGAN: Objection. 23 A Just as far as I can recall. 24 Q Okay. Will you agree to treat your 25 transcript marked as Exhibit 21, right before you,</p> <p>27</p>
<p>1 reflective of what the facts were. 2 Q Did you notice any errors in the 3 transcription? 4 A Not -- no. 5 Q Did you notice any errors in what was 6 actually said during the testimony by you or 7 anyone else? 8 A Not that I can recall. 9 Q Nothing significant? 10 A Nothing significant. 11 Q Can you recall anything now from your 12 testimony that you think is incorrect? 13 A No, I can't recall any. 14 Q And you're not aware of any mistakes in 15 the transcripts now? 16 A Not upon reading it. 17 Q So there's nothing you would like to 18 correct at this point? 19 A No. 20 Q If I were to ask the same questions 21 today that I asked you on September 20th and 21st, 22 2018, would you give the same answers? 23 MR. CADIGAN: Objection. You can 24 answer. 25 A Pardon?</p> <p>26</p>	<p>1 reflecting your testimony on September 20th, 2018, 2 as part of your sworn testimony today? 3 MR. CADIGAN: Objection. 4 A Yes, I will. 5 Q You have no reason to think it's 6 inaccurate, correct? 7 A No, I don't. 8 Q Will you agree to treat your testimony 9 transcript marked as Exhibit 22, reflecting your 10 testimony on September 21st, 2018, as part of your 11 sworn testimony today? 12 MR. CADIGAN: Objection. 13 A Yes, I will. 14 Q And there's nothing inaccurate that you 15 can think of, correct? 16 A Not that I can recall. 17 Q Will you agree to treat your videotaped 18 statements on September 20th and 21st, 2018, 19 during your testimony as part of your sworn 20 testimony today? 21 MR. CADIGAN: Objection. 22 A Yes, I will. 23 MR. MENDEL: Can we go off the record, 24 please? 25 MR. CADIGAN: Sure.</p> <p>28</p>

1 THE VIDEOGRAPHER: We're going off the
2 record. The time is 9:11 a.m.
3 (A brief recess was taken.)
4 (Plaintiff's Exhibit 66 was marked for
5 identification.)
6 THE VIDEOGRAPHER: Going back on the
7 record. The time is 9:44 a.m.
8 BY MR. MENDEL:
9 Q Mr. Heinke, we just took a break, and
10 you met with your attorneys in a different room,
11 right?
12 During the break, I provided you with a
13 number of documents that were premarked as
14 deposition exhibits, correct?
15 A Correct.
16 Q The documents I gave you were marked,
17 and they're sitting right before you in the two
18 files that I gave you. The documents were marked
19 Deposition Exhibits 4, 6, 7, 10, 12, 16, and 23
20 through 65. Is that right? If you like, you can
21 look at them right now.
22 Do you want me to repeat the numbers?
23 A Yes, what was it? Yes, please.
24 Q Sure. 4, 6, 7, 10, 12, 16, and then 23
25 through 65.

29

1 A Correct.
2 Q And I also gave you a document in the
3 form of a list that's been premarked as Deposition
4 Exhibit 66. Do you have that right before you?
5 A Yes, I do.
6 Q It's a two-page list, correct?
7 A Correct.
8 Q Is this a list of all the numbers of the
9 deposition exhibits that you were provided during
10 the break?
11 A Yes, it is.
12 Q And the deposition exhibits on that
13 two-page list, those are also -- you can read with
14 me -- 4, 6, 7, 10, 12, 6 and 23 through 65?
15 MR. CADIGAN: Wait a second. I think
16 you said that wrong.
17 A Yes, you said that wrong.
18 Q I did?
19 A Yes.
20 Q What did I say incorrectly?
21 A You said 12, 6. It's 12, 16.
22 Q Let me repeat it. Thank you.
23 Deposition Exhibits 4, 6, 7, 10, 12, 16,
24 and 23 through 65. Did I get that right?
25 A That's correct. Yes.

30

1 Q And my question is, to the best of your
2 knowledge, were you shown all of the deposition
3 exhibits listed on Deposition Exhibit 66 during
4 your investigative testimony on September 20th and
5 21st, 2018?
6 A Yes. Sorry, can you repeat the
7 question?
8 Q To the best of your knowledge, were you
9 shown all of the deposition exhibits listed on
10 Deposition Exhibit 66, which you have right before
11 you, during your investigative testimony in 2018?
12 A I could recall some of them, but I
13 couldn't recall all of them. Was that --
14 MR. CADIGAN: You've answered -- just
15 answer the question.
16 A Yes.
17 MR. CADIGAN: Wait, wait, wait.
18 A No. Sorry, I didn't recall all of them,
19 no. Is that what you're asking?
20 Q Were you shown all those exhibits,
21 correct, during your investigative testimony?
22 That's my question.
23 A I couldn't recall all of them, no.
24 Q Did you recall some of them?
25 A I recalled some of them.

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1 Q Did you think that you were not shown
2 any of them?
3 A I don't believe so, but I don't recall
4 them. It's over a year ago.
5 Q Okay. If we look at Deposition Exhibit
6 66, next --
7 MR. CADIGAN: Actually, David, just at
8 this point I just want to make it clear, because
9 we said -- you know, we're willing to stipulate
10 that, again, subject to your representations and,
11 you know, production of a certified copy of his
12 investigative testimony, that he made the
13 statements that are reflected in whatever
14 certified transcript you were able to get and was
15 shown the exhibits that would be attached to
16 whatever certified copy of the investigative
17 testimony you have, subject to, I'm sure, typos or
18 whatever.
19 MR. MENDEL: Fair enough. Thank you.
20 And I can represent that the exhibits that I
21 provided him that I just went through, in terms of
22 the numbers, were copies of the exhibits shown to
23 him during his testimony, and we'll endeavor to
24 get an additional certified copy.
25 MR. CADIGAN: Yes.

32

<p>1 BY MR. MENDEL: 2 Q I'll just have a few more questions on 3 this subject and then we can move on -- 4 A Okay. 5 Q -- just to complete the record as best 6 we can do it based on your memory of your 7 testimony, okay? 8 A Okay. 9 Q So I just want to go back to Exhibit 66. 10 That's the list. Just for the record, if we look 11 at Exhibit 66, so on the first column it's 12 "Deposition Exhibit Number," right? 13 A Yes. 14 Q And we just listed -- I just went over 15 what was included there. 16 The second column immediately adjacent 17 is captioned "Investigation Exhibit Number"? 18 A Yes. 19 Q Do you see that? 20 A Yes. 21 Q And is each deposition exhibit number 22 also identified by an investigation exhibit 23 number? 24 A Yes. 25 Q During your testimony, was each</p> <p style="text-align: center;">33</p>	<p>1 MR. CADIGAN: Can we -- just for the 2 record, you're representing that the deposition 3 numbers that are reflected on the document Exhibit 4 66 that you provided us correspond to the 5 investigative exhibits that he was shown reflected 6 in column 2. 7 MR. MENDEL: I am. That's my 8 representation. 9 MR. CADIGAN: That's your 10 representation. 11 MR. MENDEL: Yes. 12 MR. CADIGAN: I don't know. I mean, you 13 can obviously, you know, feel free to inquire as 14 to -- I mean, I think he's already indicated he 15 didn't recall all of the deposition exhibits being 16 shown to him during his investigative testimony. 17 I'm not saying that he wasn't. He just doesn't 18 recall it as he sits here today. 19 BY MR. MENDEL: 20 Q All the exhibits that you were shown in 21 your investigative testimony, they had exhibit 22 numbers on them, correct? They were labeled by 23 numbers. 24 A When I was -- a year ago? 25 Q Yes, correct, a year ago.</p> <p style="text-align: center;">35</p>
<p>1 deposition exhibit listed on Exhibit 66 identified 2 by the investigative exhibit number in the 3 adjacent column? 4 A Sorry, can you just repeat that? Was 5 every -- 6 Q Was every document -- during your 7 investigative testimony, was every document that's 8 now identified by an exhibit number -- 9 A Right. 10 Q -- was it also identified by the 11 corresponding investigation exhibit number, to the 12 extent you can remember? 13 A To the extent I can remember. 14 MR. CADIGAN: Wait, wait, wait. I'm 15 sorry. 16 A Are you saying, like, in section -- 17 MR. CADIGAN: Are you saying that the 18 set you just provided him indicates both the 19 deposition number and the investigative testimony 20 number? Or are you saying a year ago when he was 21 provided -- because clearly a year ago he wasn't 22 provided documents that had deposition numbers on 23 them. 24 MR. MENDEL: Maybe it would be easier if 25 I go --</p> <p style="text-align: center;">34</p>	<p>1 A That's correct. 2 Q Okay. 3 Looking at Exhibit 66 now, and based on 4 the review you just performed of the exhibits 5 before you, are you aware of any errors in Exhibit 6 66? 7 MR. CADIGAN: Objection. 8 A I don't know how I can comment on that 9 in that short a time, like to go through and -- 10 are you saying, Dave, that I would reference each 11 one of these to the exhibit number? 12 Q I'm just asking if you noticed any 13 errors when you looked at it just now. 14 MR. CADIGAN: Objection. 15 A I don't know how I can -- 16 Q Did you see any mistakes? 17 A Well, I don't know if it was correct or 18 right or wrong. I can't recall, like, each one of 19 these things here. I think that's -- I don't 20 know -- 21 Q I understood you didn't -- understanding 22 that you didn't remember each document, did you 23 notice any mistakes on Exhibit 66? 24 MR. CADIGAN: Objection. 25 A I didn't notice any mistakes, but I</p> <p style="text-align: center;">36</p>

<p>1 didn't know if they were all correct either, so 2 that's -- 3 Q Okay, that's fine. 4 A Is that fine? 5 Q Sure. 6 So at this point let me take back this 7 group of exhibits. 8 A And this? 9 Q Sure, I'll take that back. 10 MR. CADIGAN: Do you want this here? 11 MR. MENDEL: Yes, you can leave that 12 there. 13 BY MR. MENDEL: 14 Q Mr. Heinke, when did you first start 15 working at Kik? 16 A Full time or -- because I started as a 17 consultant or advisory in 2009. Roughly, I met 18 Ted the first time, I believe it was in March 19 2009. And I worked with him for about a year and 20 a half in that capacity and then took a full-time 21 position around November of 2010 -- November, 22 December 2010. 23 Q Before that were you working in the 24 healthcare sector? 25 A Yes, I was.</p> <p>37</p>	<p>1 Q In 2010, did you take the title of both 2 chief financial officer and chief operating 3 officer? 4 A Yes, I did. 5 Q For how long did you retain your chief 6 financial officer role? 7 A Right through until I left in June of 8 2018. 9 Q How long did you retain your chief 10 operating officer role? 11 A I maintained that till -- I believe it 12 was around April, May of 2018, if I recall 13 correctly. 14 Q That's how long you kept your COO role? 15 A Until then. 16 Q In 2018? 17 A Sorry, 2017. 18 Q April or May 2017, correct? 19 A I believe so. I'm just trying to think. 20 Yes. 21 Q If you take Exhibit 21 and look at page 22 20, line -- it's page 20 on -- 23 A Sorry, okay. 24 Q -- the small square in the page. Let me 25 know after you've looked at page 20.</p> <p>39</p>
<p>1 Q When you first started to work in a 2 full-time capacity for Kik, what kind of company 3 was Kik? 4 A What do you mean, what kind of company? 5 Q What was its main product? 6 A It was a messaging product with -- it 7 would distribute music through a messenger. 8 Q Did that product evolve at all through 9 2016? 10 A Through 2016. Sorry. 11 Q You said it was a messenger product 12 linked to music. Was that the product as it 13 existed through 2016, or did it evolve? 14 A Oh, through 2016. No, it evolved. 15 Q But it was still essentially a messenger 16 service or application? 17 A Yes. Yes, it was. 18 Q When was Kik Messenger launched? 19 A It was launched in a beta form in, I 20 believe, April of 2010 and then it launched in a 21 full production version in October, roughly, of 22 2010. 23 Q By "beta," do you mean sort of a pilot 24 status? 25 A Correct.</p> <p>38</p>	<p>1 A Yes, April 2017, yes, that's correct. 2 Q Okay. You can put that down. 3 I'll just refer to them as CFO and COO. 4 A Okay. 5 Q In these roles, to whom did you report? 6 A To Ted Livingston. 7 Q Who was Mr. Livingston? 8 A Mr. Livingston was the CEO. 9 Q Of Kik? 10 A Yes, he was. 11 Q As CFO, did you supervise Kik's 12 accounting and finance functions? 13 A Yes, I did. 14 Q During your time at Kik, did the company 15 establish facilities in Waterloo in Ontario, 16 Canada? 17 A Yes, it did. 18 Q When did it do that? 19 A Ted, when I met him, was in Toronto. I 20 believe he moved down to Waterloo in September 21 of -- around 2009 in the fall -- summer or fall of 22 that year. 23 Q Did Kik establish offices in other 24 cities? 25 A Yes, it did.</p> <p>40</p>

<p>1 Q Which cities?</p> <p>2 A It established an office in Toronto and</p> <p>3 in New York and in eventually Tel Aviv, and then</p> <p>4 we had personnel working in San Francisco, in</p> <p>5 L.A. -- or L.A., sorry. Not San Francisco.</p> <p>6 Q When did Kik establish the New York</p> <p>7 office?</p> <p>8 A I can't really recall. It would have</p> <p>9 been --</p> <p>10 Q Was it before 2015?</p> <p>11 A It may have been. I can't really recall</p> <p>12 exactly when that office started. We started in a</p> <p>13 WeWork facility, and then we established a</p> <p>14 full-time office, but I can't really recall what</p> <p>15 those years were.</p> <p>16 Q Was it in operation in 2017?</p> <p>17 A Yes, it was.</p> <p>18 Q For how many months in 2017?</p> <p>19 A I think it would have been the full year</p> <p>20 in 2017.</p> <p>21 Q Approximately how many employees were in</p> <p>22 the New York office?</p> <p>23 A It varied but --</p> <p>24 Q In 2017.</p> <p>25 A In 2017. Probably around ten.</p> <p style="text-align: center;">41</p>	<p>1 A Yes, it did.</p> <p>2 Q Did Kik Messenger have millions of</p> <p>3 users?</p> <p>4 A Yes, it did.</p> <p>5 Q Is it also fair to say that at least</p> <p>6 before the middle of 2017, Kik had challenges in</p> <p>7 making money from Kik Messenger?</p> <p>8 A Yes, it did.</p> <p>9 Q Kik tried to make money off of Messenger</p> <p>10 by working with something called points. Do I</p> <p>11 have that right?</p> <p>12 A That's correct.</p> <p>13 Q And Kik tried to make money by working</p> <p>14 with something called Promoted Chats?</p> <p>15 A Yes, it did.</p> <p>16 Q As a result of these efforts, did Kik</p> <p>17 make significant revenue compared to expenses</p> <p>18 before 2017?</p> <p>19 A No, it didn't.</p> <p>20 Q Is it correct that for the fiscal year</p> <p>21 ended June 30th, 2016, Kik's audited financial</p> <p>22 statements showed a comprehensive loss of</p> <p>23 approximately \$29 million?</p> <p>24 A I would say approximately, yes.</p> <p>25 Q Is it correct that for the fiscal year</p> <p style="text-align: center;">43</p>
<p>1 Q Did you also serve on Kik's Board of</p> <p>2 Directors?</p> <p>3 A Yes, I did.</p> <p>4 Q When did you become a board member?</p> <p>5 A When the A round was done, which would</p> <p>6 have been around -- that would have been December</p> <p>7 of 2010.</p> <p>8 Q When you say "A round," is that a form</p> <p>9 of financing?</p> <p>10 A Yes.</p> <p>11 Q That's a sale of stock to investors?</p> <p>12 A Yes, it is.</p> <p>13 Q While at Kik, did you own Kik stock?</p> <p>14 A Yes, I did -- yes, I did.</p> <p>15 Q As of the end of 2016, approximately how</p> <p>16 many shares did you own?</p> <p>17 A I don't know the number of shares. It</p> <p>18 would have been around anywhere from 3 to</p> <p>19 4 percent of the company. I think -- sorry, I'll</p> <p>20 take that back. It was probably about a million</p> <p>21 shares.</p> <p>22 Q That was 3 or 4 percent of the company?</p> <p>23 A Yes.</p> <p>24 Q Is it fair to say that Kik had some</p> <p>25 success with Kik Messenger?</p> <p style="text-align: center;">42</p>	<p>1 ended June 30th, 2017, Kik's audited financial</p> <p>2 statements show a comprehensive loss, after a tax</p> <p>3 recovery, of approximately \$16.9 million?</p> <p>4 A That's probably correct.</p> <p>5 Q Is it correct that for the fiscal year</p> <p>6 ended June 30th, 2017, before the tax recovery is</p> <p>7 factored in, the statements show that Kik lost</p> <p>8 approximately \$32.8 million?</p> <p>9 A I would have to see the statement for</p> <p>10 the exact number if you've got it there, but I</p> <p>11 think that's probably roughly correct.</p> <p>12 (Plaintiff's Exhibit 26 and Plaintiff's</p> <p>13 Exhibit 27 were marked for</p> <p>14 identification.)</p> <p>15 BY MR. MENDEL:</p> <p>16 Q I'm showing you what's been previously</p> <p>17 marked as 26 and 27. Those are Deposition</p> <p>18 Exhibits 26 and 27.</p> <p>19 MR. SCHLEGELMILCH: Actually they're in</p> <p>20 the binders.</p> <p>21 MR. MENDEL: They're in the binders, and</p> <p>22 counsel should all have copies.</p> <p>23 MR. SCHLEGELMILCH: Yes, they do.</p> <p>24 A So to your question in 2017 of a loss</p> <p>25 before tax recovery, there was a loss of</p> <p style="text-align: center;">44</p>

1 \$32,887,544.
 2 Q What exhibit are you looking at?
 3 A I'm looking at Exhibit 27.
 4 Q Does Exhibit 27 appear to be the audited
 5 financial statement for Kik for the fiscal year
 6 ending June 30th, 2017?
 7 A Yes, it does.
 8 Q Same question for Exhibit 26. Is that
 9 Kik's audited financial statement for the fiscal
 10 year ended June 30th, 2016?
 11 A Yes, it is.
 12 Q Kik does business in U.S. dollars?
 13 A Yes, it does.
 14 Q Did both audited financial statements
 15 for the years 2016 and 2017 fairly reflect Kik's
 16 financial results for those years?
 17 A Yes, they did.
 18 Q I'll take 26 and 27 back, please.
 19 In late 2016, early 2017, was Kik
 20 struggling with growing the numbers of its users
 21 of Kik Messenger?
 22 A Yes. They were not increasing. They
 23 were declining.
 24 Q This was recognized within the company,
 25 correct?

45

1 A Yes, it was.
 2 Q In late 2016 and early 2017, was Kik
 3 struggling to find a way to monetize Kik
 4 Messenger?
 5 A We were looking at different options to
 6 monetize the Messenger.
 7 Q Would you state that you were
 8 struggling -- not you personally, but was Kik, the
 9 company, struggling to find a way to monetize Kik
 10 Messenger?
 11 A I don't know if I would use the word
 12 "struggling." Every start-up looks to different
 13 models to monetize, and so we were trying to
 14 evaluate which the best one would be.
 15 Q Was there any significant revenue to
 16 speak of?
 17 A No, there wasn't.
 18 Q Had any of the strategies up until then
 19 for monetizing Kik Messenger, had they proved
 20 successful?
 21 A No, they hadn't.
 22 Q In 2016, did Kik engage an investment
 23 bank to look to see if there were other businesses
 24 that were interested in buying Kik?
 25 A Yes, they did.

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1 Q Which investment bank was that?
 2 A Credit Suisse.
 3 Q And did Credit Suisse contact a number
 4 of other businesses to see if they had an
 5 interest?
 6 A Yes, they did.
 7 Q Of the businesses contacted, none of
 8 them were interested in buying Kik at that time,
 9 correct?
 10 A At that time, no.
 11 Q And Kik decided to take a break from
 12 that process to look at other options for its
 13 business plan; is that right?
 14 A Yes, it did.
 15 Q Around this time at the end of 2016,
 16 early 2017, after the Credit Suisse process -- the
 17 Credit Suisse process had been implemented and
 18 tried, did Mr. Livingston, Kik's CEO, did he start
 19 to raise internally the possibility of issuing a
 20 cryptocurrency?
 21 A Yes, he did.
 22 (Plaintiff's Exhibit 28 was marked
 23 for identification.)
 24 BY MR. MENDEL:
 25 Q I'm showing you what's been marked

47

1 Deposition Exhibit 28.
 2 MR. MENDEL: Luke, I have one more
 3 binder. Do you want one?
 4 MR. CADIGAN: That's fine. Thank you.
 5 BY MR. MENDEL:
 6 Q Mr. Heinke, do you recognize Deposition
 7 Exhibit 28?
 8 A Yes, I do.
 9 Q For the record, this was marked
 10 previously as an Exhibit 12B. That's on the first
 11 page. Do you see that?
 12 A Yes, I do.
 13 Q What is Exhibit 28?
 14 A It's the deck for the board meeting.
 15 Q Which board meeting?
 16 A Of -- I think there's a date here, is
 17 there not?
 18 Q Let's -- go ahead.
 19 A It says February 1st, 2017.
 20 Q There's a cover page, right? The first
 21 page of Exhibit 28 is an email from Mr. Livingston
 22 to Kik Board, correct?
 23 A That's correct.
 24 Q You were a member of the Board at the
 25 time, right?

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<p>1 A Yes, I was.</p> <p>2 Q So you received this?</p> <p>3 A Yes, I did.</p> <p>4 Q And Mr. Livingston writes in his email,</p> <p>5 attaching the board presentation -- I'll read it</p> <p>6 out loud -- "With no bids coming out of the</p> <p>7 process and a continued decline in our metrics, we</p> <p>8 are in a precarious position to say the least.</p> <p>9 Therefore, I would like to spend the majority of</p> <p>10 the meeting discussing the options to extend our</p> <p>11 runway."</p> <p>12 Did I read that correctly?</p> <p>13 A That's correct.</p> <p>14 Q He sent that to the Board?</p> <p>15 A Yes, he did.</p> <p>16 Q Was it common practice to circulate a</p> <p>17 set of slides to the Board of Directors before</p> <p>18 board meetings?</p> <p>19 A Yes, it was.</p> <p>20 Q Were you typically responsible for</p> <p>21 portions of these board decks?</p> <p>22 A Yes, I was.</p> <p>23 Q Did you take care of the financial and</p> <p>24 administrative elements of the board decks?</p> <p>25 A Yes, I did.</p> <p style="text-align: center;">49</p>	<p>1 A Yes, it is.</p> <p>2 Q And then the following pages ending in</p> <p>3 numbers 5718, 5719, 5720, 5721, and 5722, those</p> <p>4 all show different metrics declining?</p> <p>5 A Yes, they do.</p> <p>6 Q The first one is "Daily average users</p> <p>7 continues to decline," and there's a chart showing</p> <p>8 a downward trend?</p> <p>9 A Yes, it does.</p> <p>10 Q The next page is "Monthly average users</p> <p>11 continues to decline"; is that right?</p> <p>12 A Yes.</p> <p>13 Q Then the next page is -- I'm on 5720 --</p> <p>14 DAU/MAU continues to decline." Is that a</p> <p>15 composite metric?</p> <p>16 A Yes.</p> <p>17 Q DAU is daily average users, and MAU is</p> <p>18 monthly average users, correct?</p> <p>19 A That is correct.</p> <p>20 Q 5721, "Activation continues to decline,"</p> <p>21 correct?</p> <p>22 A Correct.</p> <p>23 Q The last one is "Retention continues to</p> <p>24 decline," correct?</p> <p>25 A Yes.</p> <p style="text-align: center;">51</p>
<p>1 Q Did Mr. Livingston typically review the</p> <p>2 entire decks before they were circulated?</p> <p>3 A Yes, he did.</p> <p>4 Q Would the chairman of the Board</p> <p>5 sometimes also review them as well?</p> <p>6 A Yes, he would.</p> <p>7 Q Was that Sam Spadafora?</p> <p>8 A Yes, that is.</p> <p>9 Q Within Exhibit 28, if you could, do you</p> <p>10 see the small numbers on the lower right-hand</p> <p>11 corner ending in -- well, it says</p> <p>12 KIK_FOUNDATION_CAP_, and then there's a string of</p> <p>13 numbers. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q I might refer to those as Bates numbers.</p> <p>16 Can you turn to the pages -- turn to the</p> <p>17 page ending in 5717.</p> <p>18 Are you there?</p> <p>19 A Yes.</p> <p>20 Q That page is just an introductory slide</p> <p>21 that says, "Our metrics continue to decline,"</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q This is the deck for the board meeting</p> <p>25 on February 1st, 2017?</p> <p style="text-align: center;">50</p>	<p>1 Q These metrics came from Kik's data team;</p> <p>2 is that right?</p> <p>3 A That is correct.</p> <p>4 Q You believe them to be correct?</p> <p>5 A I do believe them to be correct.</p> <p>6 Q Can you turn to page 5739.</p> <p>7 A Okay.</p> <p>8 Q This is an introductory slide saying</p> <p>9 "extending runway" -- "extending runway," correct?</p> <p>10 A Correct.</p> <p>11 Q What is runway?</p> <p>12 A Runway is the length of time a company</p> <p>13 normally has cash flow to operate.</p> <p>14 Q Is it cash flow or the amount of cash,</p> <p>15 sort of, it has to operate?</p> <p>16 A It can be -- it would be cash it has and</p> <p>17 then cash -- any cash it generates during the</p> <p>18 period.</p> <p>19 Q Basically, it's a projected life span.</p> <p>20 A Exactly. You could say that.</p> <p>21 Q It's true, is it not, that the board</p> <p>22 members consistently requested that you provide</p> <p>23 runway information in your presentations in 2017?</p> <p>24 A It's a fairly standard piece of</p> <p>25 information that every start-up normally asks for</p> <p style="text-align: center;">52</p>

<p>1 for the Board.</p> <p>2 Q And did Kik still consider itself a</p> <p>3 start-up?</p> <p>4 A Yes.</p> <p>5 Q One board member in particular was</p> <p>6 concerned about cutting back expenses; is that</p> <p>7 right?</p> <p>8 A That's correct.</p> <p>9 MR. CADIGAN: Objection.</p> <p>10 Q You can answer.</p> <p>11 A Paul Holland.</p> <p>12 Q He was focused on cutting expenses?</p> <p>13 A Yes, he was.</p> <p>14 Q He was particularly interested in the</p> <p>15 runway slides?</p> <p>16 A Yes.</p> <p>17 Q But it's fair to say that the runway was</p> <p>18 important to the entire Board, correct?</p> <p>19 A Correct.</p> <p>20 Q And it was important to you.</p> <p>21 A Yes, it was.</p> <p>22 Q Can you turn to page ending in 5740.</p> <p>23 This is another slide.</p> <p>24 It says at the top "Where are we now,"</p> <p>25 correct?</p> <p>53</p>	<p>1 terms of reducing the amount of runway than having</p> <p>2 it extend out farther.</p> <p>3 Q Fair enough.</p> <p>4 3.1 million current burn, is that a</p> <p>5 monthly burn rate?</p> <p>6 A Yes.</p> <p>7 Q Looking at Exhibit 28 now, do you have</p> <p>8 any memory of looking at this same document during</p> <p>9 your investigative testimony last year in 2018?</p> <p>10 A I don't recall offhand, but I assume it</p> <p>11 was there, presented.</p> <p>12 Q At the February 1 meeting of the Board,</p> <p>13 did the Board discuss existing runway?</p> <p>14 A Yes, it did.</p> <p>15 Q During this discussion, did the Board</p> <p>16 debate whether to cut expenses as a way to extend</p> <p>17 runway?</p> <p>18 A I would say we discussed it.</p> <p>19 Q Cutting expenses would have meant laying</p> <p>20 off employees?</p> <p>21 A Yes, it would include laying off. It</p> <p>22 wouldn't be the only thing we would look at.</p> <p>23 Q You would consider a range of options,</p> <p>24 right?</p> <p>25 A Yes.</p> <p>55</p>
<p>1 A That's correct.</p> <p>2 Q And then I'm going to read from the</p> <p>3 slide. Under that caption it says, "Current</p> <p>4 Situation," bullet, "26 million in cash," bullet,</p> <p>5 "3.1 million current burn," and then third bullet,</p> <p>6 "Runway to September 5th, 2017."</p> <p>7 Did this accurately reflect Kik's</p> <p>8 financial situation at the time?</p> <p>9 A I'm not really sure because I saw in</p> <p>10 some documents we had at that time that I think we</p> <p>11 extended runway until the end of November.</p> <p>12 Q Okay.</p> <p>13 A So ...</p> <p>14 Q But as of February 1st, do you have any</p> <p>15 reason to think this wasn't Kik's financial</p> <p>16 situation?</p> <p>17 A No, that's probably around accurate,</p> <p>18 within a month or two.</p> <p>19 Q It wouldn't have been your practice to</p> <p>20 include incorrect information to the Board, would</p> <p>21 it?</p> <p>22 A No, we would show conservative</p> <p>23 information, though.</p> <p>24 Q What do you mean by "conservative"?</p> <p>25 A That we would be more aggressive in</p> <p>54</p>	<p>1 Q Can you turn to the page ending in 5741.</p> <p>2 It says, "What are our options?" I think you just</p> <p>3 went right by it. 5741.</p> <p>4 A This one? Yes.</p> <p>5 Q Okay. And then that introduces the next</p> <p>6 section of this presentation?</p> <p>7 A That's correct.</p> <p>8 Q And then if we skip ahead -- these pages</p> <p>9 discuss what the Board was considering, the</p> <p>10 different types of things, steps it could take,</p> <p>11 correct?</p> <p>12 A Yes, it is.</p> <p>13 Q All right. So, can you flip to 5747.</p> <p>14 At the top of the page there it says, "Investment</p> <p>15 Alternatives," right?</p> <p>16 A Yes.</p> <p>17 Q And these are different investment</p> <p>18 options that Kik was considering?</p> <p>19 A Yes, it is.</p> <p>20 Q These would be investments into the</p> <p>21 company, correct?</p> <p>22 A I don't think they would -- they would</p> <p>23 be investments in the company. I think</p> <p>24 cryptocurrency was discussed at that time as being</p> <p>25 more a business model aspect, not necessarily an</p> <p>56</p>

<p>1 investment.</p> <p>2 Q But it's listed under "Investment" --</p> <p>3 A Yes.</p> <p>4 Q -- "alternatives" here, correct?</p> <p>5 A Correct.</p> <p>6 Q All right. And that's -- you just</p> <p>7 mentioned cryptocurrency. That's the fifth bullet</p> <p>8 down. There's five bullets, and cryptocurrency is</p> <p>9 the fifth one, right?</p> <p>10 A That's correct.</p> <p>11 Q Let's go to page 5752.</p> <p>12 Here is a page with "Cryptocurrency" at</p> <p>13 the top, correct?</p> <p>14 A That's correct.</p> <p>15 Q This is just discussing the</p> <p>16 cryptocurrency option?</p> <p>17 A Yes.</p> <p>18 Q And you have "Current Status." It says,</p> <p>19 "Consider launching a new cryptocurrency called</p> <p>20 'Kik Coins.'"</p> <p>21 Was that the option being considered?</p> <p>22 A Yes.</p> <p>23 Q And then below there's a couple</p> <p>24 additional bullets, and then it says, "Key</p> <p>25 Considerations," and there's a "Pros" column and a</p> <p style="text-align: center;">57</p>	<p>1 A Yes, it was.</p> <p>2 Q And cryptocurrency was also a -- it</p> <p>3 would have been a large pivot in Kik's business</p> <p>4 model; isn't that right?</p> <p>5 A He has it defined as that. I wouldn't</p> <p>6 state that, looking in retrospect now, because</p> <p>7 what we did was we had Kik Points and we had an</p> <p>8 ecosystem formed. And all we were doing was</p> <p>9 replacing the Kik Points with the cryptocurrency,</p> <p>10 which had, you know, broader ability to have usage</p> <p>11 outside of what we were using Kik Points for.</p> <p>12 Q You said "he." Did someone else write</p> <p>13 these words "Large pivot in business model"?</p> <p>14 A I think those -- I don't recall who</p> <p>15 prepared these slides, but it would have been -- I</p> <p>16 don't know -- it could have been either Derek,</p> <p>17 Tanner, Ted, or myself.</p> <p>18 Q Mr. Livingston would have reviewed this</p> <p>19 before it went to the Board, correct?</p> <p>20 A Yes.</p> <p>21 Q Was this meeting the first time that the</p> <p>22 Board substantively discussed starting a new</p> <p>23 cryptocurrency?</p> <p>24 A I think it's the first time the Board</p> <p>25 probably looked at cryptocurrency, but Ted had</p> <p style="text-align: center;">59</p>
<p>1 "Cons" column. Under the "Pros" column, there is</p> <p>2 another bullet that says, "New way to raise funds</p> <p>3 that is in vogue"; is that right?</p> <p>4 A Correct.</p> <p>5 Q And in the "Cons" column it says, "Large</p> <p>6 pivot in business model"; is that right?</p> <p>7 A Yes.</p> <p>8 Q The Board at this meeting discussed</p> <p>9 cryptocurrency as a new way to raise funds; isn't</p> <p>10 that right?</p> <p>11 A I think that was one aspect of it. If</p> <p>12 you look at the second point under "Pros" that you</p> <p>13 didn't mention, was that it's an "Immediate value</p> <p>14 exchange on Kik to power transactions."</p> <p>15 Q Okay. So is both of them including a</p> <p>16 way to raise funds, correct?</p> <p>17 A No. One is a business model aspect, and</p> <p>18 one is -- when you say "raise funds," I mean, my</p> <p>19 looking at Kik Points, and as reflected in our</p> <p>20 financial statements, it was a sale of a product.</p> <p>21 So that's a way of getting funds into the</p> <p>22 business. If you want to -- that's how I look at</p> <p>23 it.</p> <p>24 Q Cryptocurrency was an option for</p> <p>25 extending Kik's runway, was it not?</p> <p style="text-align: center;">58</p>	<p>1 been involved in looking at Bitcoin and other</p> <p>2 currencies since, I think, 2011.</p> <p>3 Q Right. But this is the first time that</p> <p>4 the Board was sitting down and thinking about it</p> <p>5 in sort of a sustained way?</p> <p>6 A Yes.</p> <p>7 Q What happened as a result of this</p> <p>8 meeting with respect to cryptocurrency -- the</p> <p>9 cryptocurrency idea?</p> <p>10 A I believe at this meeting it was</p> <p>11 discussed that we should continue and investigate</p> <p>12 it as an option for a business model.</p> <p>13 Q Did Kik's management receive approval to</p> <p>14 look further at the option of cryptocurrency?</p> <p>15 A Yes.</p> <p>16 Q Were they instructed to go and consider</p> <p>17 the option in a more sustained way?</p> <p>18 A Yes, they were.</p> <p>19 Q I'll take that exhibit back from you.</p> <p>20 (Plaintiff's Exhibit 29 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. MENDEL:</p> <p>23 Q Mr. Heinke, I'm giving you what's been</p> <p>24 marked Deposition Exhibit 29. Take a moment to</p> <p>25 look at it.</p> <p style="text-align: center;">60</p>

<p>1 So 29 is an email chain, correct?</p> <p>2 A Yes.</p> <p>3 Q At the top it's -- the most recent</p> <p>4 email, it's from you, Peter Heinke, to Ted</p> <p>5 Livingston on February 3rd, 2017?</p> <p>6 A Yes.</p> <p>7 Q So this is a few days after the board</p> <p>8 meeting that we just talked about, right?</p> <p>9 A Yes.</p> <p>10 Q You're responding to an email from</p> <p>11 Mr. Livingston, right?</p> <p>12 A Yes.</p> <p>13 Q And Mr. Livingston is forwarding an</p> <p>14 email written to him from Jim Estill. Is that a</p> <p>15 board member?</p> <p>16 A Yes, it is.</p> <p>17 Q So Mr. Estill had written his email on</p> <p>18 February 2nd, the day before 2017.</p> <p>19 A Yes.</p> <p>20 Q And one of his ideas was to prepare four</p> <p>21 to five slides on the cryptocurrency idea for the</p> <p>22 rest of the Board, right?</p> <p>23 A Yes.</p> <p>24 Q And Mr. Livingston forwarded it to you</p> <p>25 on February 3rd, and then you responded on</p> <p style="text-align: center;">61</p>	<p>1 (Plaintiff's Exhibit 4 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. MENDEL:</p> <p>4 Q I'm giving you what's being marked</p> <p>5 Deposition Exhibit 4. For the record, the</p> <p>6 Investigation Exhibit 14A.</p> <p>7 Exhibit 14A -- I'm sorry, Exhibit 4,</p> <p>8 this is another deck presentation for a board</p> <p>9 meeting, right?</p> <p>10 A Yes, it is.</p> <p>11 Q This meeting is on February 16th, 2017?</p> <p>12 A Yes, it is.</p> <p>13 Q This was about three weeks after the</p> <p>14 prior board meeting when the idea of the</p> <p>15 cryptocurrency was first substantively discussed?</p> <p>16 A Yes, it is.</p> <p>17 Q Mr. Livingston and other executives are</p> <p>18 providing the Board a follow-up to the issues you</p> <p>19 had discussed, right?</p> <p>20 A Yes, it is.</p> <p>21 Q On cryptocurrency.</p> <p>22 If you turn to page ending in 6542.</p> <p>23 This says, "Agenda," right? Are you there?</p> <p>24 A These numbers are pretty small.</p> <p>25 Q They are pretty small.</p> <p style="text-align: center;">63</p>
<p>1 February 3rd, "I agree, why I am having Tanner</p> <p>2 make up the slides that if you looked at this as</p> <p>3 an investment - will provide the framework,"</p> <p>4 right? That's what he wrote?</p> <p>5 A I see that written, yes.</p> <p>6 Q Then you wrote, "There are nuances here</p> <p>7 that you have to consider also from a securities</p> <p>8 law standpoint," right?</p> <p>9 A Yes.</p> <p>10 Q This reflected your view that creating a</p> <p>11 cryptocurrency could raise securities law issues,</p> <p>12 correct?</p> <p>13 A When you say my view, I would -- like</p> <p>14 anything, I would look at this as to what the</p> <p>15 different implications were from a regulatory</p> <p>16 standpoint, whether it would be for security or</p> <p>17 for -- because we looked a lot also at Kik cash.</p> <p>18 So there were all sorts of rules to consider at</p> <p>19 that point in time.</p> <p>20 Q And securities laws were among the rules</p> <p>21 you were all looking at.</p> <p>22 A Yes.</p> <p>23 Q I'll take that back.</p> <p>24 Can you look in your -- I have it.</p> <p>25 Never mind.</p> <p style="text-align: center;">62</p>	<p>1 A 36?</p> <p>2 Q Slide 2. Maybe that's it. Just turn</p> <p>3 the page.</p> <p>4 A This one? I'm sorry.</p> <p>5 Q Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Slide 2, "Agenda"?</p> <p>8 A Yes, I do.</p> <p>9 Q It's just three enumerated items,</p> <p>10 "Process update, Ted"; "The potential for an ICO,</p> <p>11 Erin"; and, 3, "The potential for growth, Eran."</p> <p>12 Ted, that's Ted Livingston. Erin is</p> <p>13 Erin Clift?</p> <p>14 A Correct.</p> <p>15 Q And she was the chief marketing officer?</p> <p>16 A Correct.</p> <p>17 Q And Eran was Eran Ben-Ari, right?</p> <p>18 A Correct.</p> <p>19 Q Chief product officer?</p> <p>20 A Yes.</p> <p>21 Q And you all reported to Ted Livingston,</p> <p>22 the CEO, right?</p> <p>23 A That's correct.</p> <p>24 Q Then go to 6455.</p> <p>25 Again, kind of hard to read, but it</p> <p style="text-align: center;">64</p>

<p>1 says, "Kik in the blockchain." Are you there?</p> <p>2 A Yes, okay.</p> <p>3 Q You're at that slide. This starts a</p> <p>4 discussion of the cryptocurrency, right?</p> <p>5 A Right.</p> <p>6 Q Okay. And then, slide 11, ending in</p> <p>7 461, let me know if you're there.</p> <p>8 A Yes.</p> <p>9 Q This is a slide with a blockchain</p> <p>10 insignia or a circle in the middle of the page,</p> <p>11 right?</p> <p>12 A Correct.</p> <p>13 Q And below, it says, "We believe that the</p> <p>14 scale of our network alone will drive strong</p> <p>15 interest from the cryptoinvestor community,"</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q Was this Ms. Clift's portion of the</p> <p>19 presentation?</p> <p>20 A I can't recall that.</p> <p>21 Q Was it yours?</p> <p>22 A No, I don't think I presented -- if you</p> <p>23 looked at the beginning, the agenda suggested that</p> <p>24 I wasn't. It was Ted --</p> <p>25 Q It was Mr. Livingston --</p> <p style="text-align: center;">65</p>	<p>1 A I believe CoinFund was one of the</p> <p>2 companies at that time -- I'm just trying to think</p> <p>3 of timing-wise -- that we had engaged to</p> <p>4 understand the whole blockchain environment</p> <p>5 better.</p> <p>6 Q Can you turn to page ending in 471.</p> <p>7 This is under the section "Next Steps."</p> <p>8 It was the prior page, right?</p> <p>9 A This is -- this one?</p> <p>10 Q Correct. You're on the right page. If</p> <p>11 you flip back a page, it's under the section "Next</p> <p>12 Steps."</p> <p>13 A Got it.</p> <p>14 Q Okay.</p> <p>15 This says, "Three weeks to gauge</p> <p>16 preliminary investor interest," right?</p> <p>17 A Correct.</p> <p>18 Q And this is still talking about</p> <p>19 cryptocurrency?</p> <p>20 A It is.</p> <p>21 Q And there's four steps listed</p> <p>22 immediately below, and next to those four steps it</p> <p>23 says, "CoinFund"?</p> <p>24 A Yes.</p> <p>25 Q Under each -- next to each of the four</p> <p style="text-align: center;">67</p>
<p>1 A -- Eran and/or Erin.</p> <p>2 Q Erin. Do you think Erin or Eran would</p> <p>3 have done this?</p> <p>4 A Probably.</p> <p>5 Q Did the Board discuss this statement?</p> <p>6 A Yes.</p> <p>7 Q Then if you turn to page 46 -- ending in</p> <p>8 463. That states at the top, "Crowdfunders have</p> <p>9 strong appetites for exploration," right?</p> <p>10 A Correct.</p> <p>11 Q And below -- right below that, on the</p> <p>12 left side, there is a large circle. It says,</p> <p>13 "68 percent," and then next to it, "Would invest</p> <p>14 in a tradeable -- tradeable digital tokens of a</p> <p>15 non-blockchain company if offered good risk-reward</p> <p>16 potential."</p> <p>17 Is that what it says?</p> <p>18 A Yes.</p> <p>19 Q And Kik considered itself a</p> <p>20 non-blockchain company at the time?</p> <p>21 A I believe so, yes.</p> <p>22 Q Did this observation come from another</p> <p>23 company called CoinFund?</p> <p>24 A Yes.</p> <p>25 Q How do you know that?</p> <p style="text-align: center;">66</p>	<p>1 steps, it says either one or two weeks?</p> <p>2 A Yes.</p> <p>3 Q These were all tasks assigned to</p> <p>4 CoinFund for going forward?</p> <p>5 A I believe so, yes.</p> <p>6 Q And the second step, the description is</p> <p>7 "Market fit between Kik and cryptoinvestors,"</p> <p>8 right?</p> <p>9 A Correct.</p> <p>10 Q Did Kik go ahead and take some</p> <p>11 additional weeks to gauge preliminary investor</p> <p>12 interest?</p> <p>13 A Take additional weeks? I believe so.</p> <p>14 This is a period of time when we were still</p> <p>15 integrating Rounds of Israel. So I was heavily</p> <p>16 involved with Rounds and still doing the</p> <p>17 acquisition there so the marketing research and</p> <p>18 all this sort of stuff was handled by Erin and her</p> <p>19 team during this time.</p> <p>20 Q Just so we understand, Rounds was an</p> <p>21 acquisition Kik was involved in?</p> <p>22 A Yes. We had in December of 2016</p> <p>23 purchased Rounds, which was a video-based</p> <p>24 messaging company in Tel Aviv. So we acquired it</p> <p>25 for both the technology and for the people that</p> <p style="text-align: center;">68</p>

<p>1 were in that company. 2 Q Going back to this slide in the exhibit, 3 where it says, "Three weeks to gauge preliminary 4 investor interest," that was sort of on a 5 going-forward basis for next steps, right? 6 A I would assume so. 7 Q You would assume so because it's in the 8 "Next Steps" section? 9 A Yes. 10 Q Is it fair to say at this stage that not 11 all the board members were enthusiastic about the 12 crypto idea? 13 MR. CADIGAN: Objection. 14 A I can't conjecture that. I mean, 15 Paul's -- as you identified earlier, Paul's 16 objections were more about reducing cash flow, and 17 a lot of them, it was new to them also. I 18 wouldn't say there was -- I can't recall there was 19 a major negative reaction to it. 20 Q Mr. Holland was concerned about 21 expenses? 22 A He was -- 23 MR. CADIGAN: Objection. I'm sorry. 24 Q Your understanding. 25 A It was --</p> <p style="text-align: center;">69</p>	<p>1 Deposition Exhibits 6 and 30. 2 A Uh-hmm. 3 Q Just for the record, the one that says 4 6, that also has the Investigation Exhibit No. 39 5 on it, right? 6 A Correct. 7 Q And the one that says Deposition Exhibit 8 30, that says Investigative Exhibit 170? 9 A Yes. 10 Q Great. 11 So going to, first, the one that says 6, 12 is this a report that CoinFund delivered to Kik? 13 A Yes, it is. 14 Q It has a date of March 21st, 2017? 15 That's when they delivered it? 16 A That's correct. 17 Q You received the report, right? 18 A Yes, I did. 19 Q You reviewed it? 20 A At the time, yes. 21 Q Did this report provide information that 22 Kik had asked for about a cryptocurrency? 23 A Yes, it did. 24 Q If you look at Exhibit 30 for a second, 25 please. At the top it says, "Review of CoinFund</p> <p style="text-align: center;">71</p>
<p>1 Q That was your understanding? 2 A My understanding was he was more 3 concerned about expenses, yes. 4 Q Was it your understanding that he was 5 proposing to cut down -- cut Kik to about 50 to 60 6 employees? 7 A That is what he suggested, yes. 8 Q I'll take that back. 9 Did Kik hire CoinFund to help the 10 company assess the idea of a digital token? 11 A I don't know if that was a specific 12 thing -- we didn't have a -- we did to hire them 13 to help us out with that. 14 Q And they were hired to help with the 15 four steps we just read about? 16 A Yes, I believe so. 17 Q Did you have responsibility for 18 negotiating the arrangement with CoinFund? 19 A I did -- I did, yes. 20 Q You did, okay. 21 (Plaintiff's Exhibit 6 and Plaintiff's 22 Exhibit 30 were marked for 23 identification.) 24 BY MR. MENDEL: 25 Q So I've given you what's been marked</p> <p style="text-align: center;">70</p>	<p>1 Deliverable." 2 This is an internal Kik document, right? 3 A Yes, it is. 4 Q A summary of notes? 5 A Yes. 6 Q It's dated March 22nd, 2017, right? 7 A Correct. 8 Q What is this? 9 A It's a review of CoinFund deliverable. 10 So it was to the management team, it looks like. 11 Q You're listed as an attendee, right? 12 A That's correct. 13 Q Erin Clift is listed here, too, right? 14 A Yes, she is. 15 Q And so is Mr. Ben-Ari? 16 A That's correct. 17 Q So going back to 6 -- Exhibit 6, excuse 18 me. And can you go to page 9 of Exhibit 6. 19 Are you there? 20 A Yes. 21 Q This is identified by the Bates number 22 as 7699 in the lower right corner. So on this 23 page what we see are examples of tokens -- digital 24 tokens that were in the market at the time; is 25 that right?</p> <p style="text-align: center;">72</p>

1 A Correct.
2 Q That's what your understanding was?
3 A That's correct.
4 Q And at the bottom of the page, it
5 says -- this is CoinFund speaking -- actually, if
6 you could, go back a page, to page 7. It says --
7 it starts the section called "Notable Token
8 Sales." Then at the bottom of the page, "The
9 following outlines some observations about the
10 token sales space."
11 Are you with me?
12 A Yes.
13 Q It says, "The investment space is
14 extremely hot," right?
15 A Yes.
16 Q And "All of the tokens mentioned here
17 have generated returns at the time of the writing,
18 as measured on a U.S. dollars basis," right?
19 A Yes.
20 Q And the average return multiple is 15
21 times --
22 A Yes.
23 Q -- or 15X. They say that and underline
24 it?
25 A That's correct.

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1 Q This is all from CoinFund, right?
2 A Yes.
3 Q Could you go to page 19.
4 It says at the top, "CoinFund
5 Cryptoinvestor Survey," right?
6 A That's correct.
7 Q And then "Methodology." I'm just going
8 to read from it. "Working together with the Kik
9 team, CoinFund conducted a public and an open
10 source survey in the blockchain research and
11 investment community, targeting the set of people
12 who are knowledgeable and experienced in issues
13 surrounding blockchain-based decentralized
14 crowdfunding and known as 'cryptoinvestors.'"
15 You understood that -- I'll stop there,
16 reading there. You understood CoinFund was
17 conducting a survey?
18 A Yes, based on this report.
19 Q If you could, go to page 25 of the
20 CoinFund report.
21 Ending in Bates number 7715, it says --
22 there's a section called "User vs. Investor
23 Interest."
24 Do you see that?
25 A Yes.

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1 Q And then there's three -- three findings
2 below that, and it says, number 1, "19.3 percent
3 would forego participation"?
4 A Yes.
5 Q And the second one says, "48.4 percent
6 lean toward being investors only (with
7 21.5 percent being speculators)," right?
8 A Yes.
9 Q These were findings that CoinFund
10 reported to Kik?
11 A Yes.
12 Q I'll take back Exhibit 6, please, and
13 I'll take back the other one, too. Thank you.
14 (Plaintiff's Exhibit 33 was marked for
15 identification.)
16 BY MR. MENDEL:
17 Q I'm giving you what's been marked
18 Exhibit 33.
19 A Okay.
20 Q For the record, this was marked
21 previously as Exhibit 54 in the investigation,
22 right?
23 A Yes.
24 Q And this is an email from Jake Brukman
25 to you on April 3rd, 2017?

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1 A Correct.
2 Q Who is Mr. Brukman?
3 A He was the principal of CoinFund. I
4 believe he was -- I think they're a partnership so
5 I think he was one of the partners.
6 Q The email is to you, Hayeon Kim -- she's
7 at Kik, right?
8 A Yes.
9 Q -- Erin Clift, and then there's an email
10 address that says, "Core Team," right?
11 A Yes.
12 Q Does exhibit -- well, I should say,
13 behind the email there's an attachment, right?
14 And it's "CoinFund Additional Research"?
15 A Yes.
16 Q So this is a supplemental report from
17 CoinFund?
18 A Yes.
19 Q Dated April 3rd, 2017, right?
20 A Yes.
21 Q Does this respond to questions that you
22 had raised?
23 A I take it from this, yes.
24 Q Why do you say that?
25 A Because it says, "Questions from Peter."

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<p>1 Q 3-23, March -- it's fair to say those 2 were March 23rd questions from you? 3 A Yes. 4 Q What generated your questions? 5 A What generated my questions? 6 Q Yes. 7 A I was learning -- trying to learn more 8 about cryptocurrency and what was involved in it. 9 So it was -- as I said, like, I just became aware 10 more about it at the board meeting. I didn't 11 understand a lot about cryptocurrency at that 12 time. So this is more still education for me at 13 that time. 14 Q Were some of the questions generated -- 15 or did they occur to you from reviewing the prior 16 report? 17 A The prior report and just outside 18 industry information, what I was reading about. 19 Q If you look at page 855 -- I think 20 you're already on it. Actually, if you go back. 21 A Yes. 22 Q There's a diagram with the title "Token 23 Sale Participants" at the top there. 24 Do you see that? 25 A Yes.</p> <p style="text-align: center;">77</p>	<p>1 That's a definition that CoinFund 2 provided, right? 3 A That's correct. 4 Q That didn't match your understanding at 5 the time? 6 A I can't recall at the time. We ended up 7 splitting them up between those people that we 8 reviewed more as sort of like what, I guess, he 9 would define as cryptoinvestors and those people 10 that we defined as participants in the ecosystem. 11 The nomenclature evolved over -- this is 12 going back -- this is very early in the process. 13 This is back in March. 14 Q At this point in time, is it fair to say 15 that Kik was considering a sale that would include 16 all of those groups? 17 A I can't recall when exactly at this 18 point in time, whether we were doing it as one 19 complete sale or two sales. 20 Q Can you go to page 857? 21 A Yes. 22 Q It says, "Regulatory Bodies" at the top? 23 A That's correct. 24 Q This is still CoinFund responding to 25 your questions; is that right?</p> <p style="text-align: center;">79</p>
<p>1 Q There's a reference to -- in the diagram 2 itself, you have, "private investor" and to the 3 right, "cryptoinvestor." 4 A Yes. 5 Q You understood "cryptoinvestor" to refer 6 to people who would buy tokens through a public 7 sale; is that right? 8 A No, I didn't understand that at that 9 time. 10 Q What did you understand cryptoinvestors 11 to refer to? 12 A We -- well, I can't really recall going 13 over -- but this was very early in the process, 14 and I can't recall when exactly we started 15 splitting out those people that we referred to as 16 capitalists in the white paper or participants, 17 and I'm not sure exactly what the timing was of 18 that. 19 Q The next page, if you just go to the 20 next page at the top -- 21 A Yes. 22 Q -- it states, "Cryptoinvestors," in 23 quotes, "include regular participants of token 24 sales as well as Kik users who are participating 25 in the sale by way of cryptocurrency."</p> <p style="text-align: center;">78</p>	<p>1 A That's correct. 2 Q There's a section that says, "FinCEN, 3 Department of Treasury." Do you see that? 4 A That's correct. 5 Q Below that it says, "SEC," right? 6 A That's correct. 7 Q This is CoinFund responding to your 8 questions about SEC? 9 A Yes. 10 Q They say, first, under little a., "The 11 SEC has yet given no guidance that any particular 12 token offering is a security, and this guidance is 13 not expected in the near future," correct? 14 A That's correct. 15 Q And then b., "The SEC would potentially 16 apply the Howey test to determine if the sale of 17 such tokens would constitute an investment 18 contract," right? 19 A Correct. 20 Q And then it also says, "Some companies, 21 in an effort to defensibly avoid this 22 classification altogether, have structured their 23 offering outside of the U.S. and block U.S. 24 users," right? 25 A That's correct.</p> <p style="text-align: center;">80</p>

<p>1 Q Did Kik later do this step when it 2 issued a Kin tokens? 3 A I think we changed path quite a lot from 4 whether -- like, as I said, we viewed this fairly 5 early on as being a currency. We were taking Kik 6 Points and replacing it with Kin. 7 So, as such, my concern was more with 8 relationship to viewing it as a currency, so 9 things like FinCEN, which we registered for at the 10 time, and we then also considered -- well, the 11 things that he talks about further here, about the 12 IRS, what are the tax implications, because we 13 viewed this as a taxable event. 14 I think it was also around this time 15 that we took the step of -- I can't really recall 16 time exactly, but we employed KPMG to take a look 17 at it from a financial reporting and tax 18 standpoint. And relating to our previous, you 19 know, assessments of Kik currency, when we looked 20 at the card, we looked at that also. 21 Q CoinFund had written in c., like I just 22 said, that "Some companies, in an effort to avoid 23 this classification altogether, have structured 24 their offering outside of the U.S. and block U.S. 25 users."</p> <p>81</p>	<p>1 Q And CoinFund advised you, again, not in 2 the legal way, but that the SEC could employ the 3 Howey test, right? 4 A That's what they said, yes, in this 5 document. 6 Q By this time had Kik hired a general 7 counsel? 8 A Yes, we had general counsel. 9 Q Was she working from her home in Los 10 Angeles? 11 A Sorry, no, when you say "general 12 counsel," we didn't hire general counsel until I 13 believe it was July or August. 14 Q Okay. That was Eileen Lyon? 15 A That's correct. 16 MR. MENDEL: Why don't we take a break. 17 Off the record. 18 THE WITNESS: Okay. 19 THE VIDEOGRAPHER: We are going off the 20 record. This is the end of media unit number 1. 21 The time is 10:45 a.m. 22 (A brief recess was taken.) 23 THE VIDEOGRAPHER: We're back on the 24 record. This is the beginning of media unit 25 number 2. The time is 10:57 a.m.</p> <p>83</p>
<p>1 Did Kik do that? 2 A No, we didn't. Sorry, can I correct on 3 that? 4 Q Sure. 5 A We did eventually in certain areas 6 where, I think it was New York, that you needed a 7 BitLicense. So we did block users from New York. 8 Q Okay. But it didn't block U.S. 9 generally? 10 A No. 11 Q Just to be clear, CoinFund did advise 12 you that issuing a cryptocurrency had SEC 13 implications, correct? 14 A As they said at the top there, "The 15 following should not be construed as legal advice 16 and is provided for informational purposes only." 17 So they just made us aware it's possible that the 18 following regulators could come into play. 19 Q Understood. They're not lawyers, right? 20 A That's right. 21 Q But they were raising these -- 22 A Yes. 23 Q They were responding and discussing 24 these issues with you. 25 A That's correct.</p> <p>82</p>	<p>1 BY MR. MENDEL: 2 Q Mr. Heinke, what's before you right now? 3 A Exhibit 33. 4 Q I'll take that back. 5 (Plaintiff's Exhibit 35 was marked for 6 identification.) 7 Q I'm giving you, Mr. Heinke, what's been 8 marked Exhibit 35. 9 What is Exhibit 35? 10 A It's an introduction email to the board 11 deck from April 2017. 12 Q That's from Mr. Livingston to the Board? 13 A That's correct. 14 Q And does Mr. Livingston's email also 15 include the CoinFund report? Actually, yes, go 16 ahead. 17 A I'm not sure. 18 Q Let's go back to the first page. 19 A Got it, okay. 20 Q In the second paragraph -- this is 21 Mr. Livingston's email -- introductory email, "For 22 those interested in doing some prereading" -- 23 A Sorry. Okay. 24 Q Do you see that? 25 -- "I have attached a deck that</p> <p>84</p>

1 summarizes how crypto fits into our chat community
2 strategy. I have also added CoinFund's research
3 deliverable."
4 Then if you go to, flipping through,
5 KIK_, ending in 6657.
6 A Got it, yes.
7 Q Got it? So that's Mr. Livingston
8 sending the March 21st CoinFund report to the
9 Board, right?
10 A That's correct.
11 Q Great.
12 For the record, that was Investi- --
13 excuse me, Investigation Exhibit 16A? It's on the
14 front.
15 A Oh, yes.
16 Q And Deposition Exhibit 35, right?
17 A Correct.
18 Q I'll take that back. Thank you.
19 (Plaintiff's Exhibit 36 was marked for
20 identification.)
21 BY MR. MENDEL:
22 Q Here is Deposition Exhibit 36. This is
23 a one-page email on the front from Mr. Livingston
24 to Kik Board on May 4th, 2017, right?
25 A Correct.

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1 Q And that's attaching a board deck for
2 board meeting May 5th, 2017, right?
3 A Correct.
4 Q If we go to a section of the board deck
5 that ends in 6791 -- let me know if you're there.
6 A Correct.
7 Q All right. This is captioned "Runway
8 Budget Versus Revised Forecast," right?
9 A Correct.
10 Q This has a revised runway forecast of
11 November 1st, 2017.
12 A Correct.
13 Q It's revised down from November 7th,
14 2017, right?
15 A Correct.
16 Q Is this what you were remembering before
17 about the runway going out further?
18 A That's correct.
19 Q Okay. The earlier runway was back in
20 February and so now we're in May.
21 A That's correct. So the earlier one
22 ended -- the runway lasted per the projections
23 into September. Now it's lasting in this one to
24 November.
25 Q Okay. But this is shaving it by a week,

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1 right?
2 A No. It's actually --
3 Q Under the "Revised Forecast," it says,
4 "Last presented by November 7th," right?
5 A Right. But the document you showed me
6 earlier, we discussed it said "Runway to September
7 2017." So it's not shaving it. It's actually
8 extending from what that document was.
9 Q We agree. I mis- --
10 A That's okay.
11 Q I didn't make my question precise
12 enough.
13 A Okay.
14 Q The runway was extended from the
15 September 2017 cutoff --
16 A Right.
17 Q -- that had been projected in February.
18 Now it's in November.
19 A That's correct.
20 Q Fair enough.
21 And then it says, "Revised Forecast with
22 Severance, October 9th, 2017."
23 A Correct.
24 Q Severance means that's if it provide --
25 Kik would provide some sort of severance payment

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1 to its employees if it were to shut down?
2 A Correct.
3 Q This slide reflects the runway that you
4 understood to exist in May, correct?
5 A Correct.
6 Q You presented this to the Board; is that
7 right?
8 A Correct.
9 Q Then let's go to 6799. This begins a
10 section called "Cryptocurrency," correct?
11 A Correct.
12 Q And then let's go to page 7802. It's
13 two pages forward.
14 MR. SCHLEGELMILCH: 6802.
15 Q 6802. 6802.
16 A 6802, yes.
17 Q It says, "Step 1, create a new
18 cryptocurrency with 10 trillion tokens"?
19 A Correct.
20 Q That's what Kik was planning to do at
21 this step?
22 A Correct.
23 Q Below it lists different percentages
24 going to different types of groups. And it says,
25 "30 percent to investors"; is that right?

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<p>1 A That's correct, in this document, yes. 2 Q Yes, in this document, on May 5th. For 3 the May 5th board meeting it says, "30 percent to 4 investors," correct? 5 A Correct. 6 Q It says under that -- under "Investors," 7 it says, "10 percent sold on day 1," correct? 8 A Correct. 9 Q In fact, that's what Kik eventually did 10 with Kin, it sold 10 percent of its float on day 11 1, right? 12 A That's correct. 13 Q That was 1 trillion Kin? 14 A That's correct. So just to take -- I 15 just want to go back because this isn't -- 16 "community builder" so -- because we had 17 60 percent, we gave -- so this must have -- so 18 this has changed then afterwards, I guess. 19 Q Okay. This was just the plan as of 20 May 5th, 2017, right? 21 A It was initial outline, yes. 22 Q Okay. 23 Can we go to page 7806 -- 6806. I'm 24 sorry, I misspoke. 25 Please go to page ending in 6806.</p> <p style="text-align: center;">89</p>	<p>1 A Yes, it was discussed with counsel 2 present. 3 Q Great. 4 Can you go to page 6810. Are you there? 5 It says, "Timeline"? 6 A Yes. 7 Q I'm just going to walk through some of 8 the number -- the items here. It's a graphic, is 9 it not? 10 A That's correct. 11 Q May 24th, it says, "Token Summit 12 Announcement." 13 A Correct. 14 Q Then for June, further on the timeline 15 it says, "Presale roadshow," right? 16 A Correct. 17 Q Then the next dot on the timeline is "To 18 be determined early July token distribution 19 event." 20 A Correct. 21 Q Then the last bullet on the timeline is 22 "To be determined full product launch," right? 23 A Correct. 24 Q So full product launch was planned at 25 this point for after the token distribution event?</p> <p style="text-align: center;">91</p>
<p>1 A That's correct. 2 Q Here we have a page -- a slide that just 3 says "Risks," correct? 4 A Correct. 5 Q And there's three risks listed. The 6 first risk listed just says "Securities law," 7 correct? 8 A Correct. 9 Q This was the risk that selling of Kin 10 tokens could be seen as the selling of a security; 11 isn't that right? 12 A That gets into attorney-client privilege 13 because everything related to that is redacted 14 so ... 15 Q But you -- I mean, it's fair to say, 16 independent -- and, please, counsel, jump in if 17 this is going on privilege -- but the topic being 18 discussed was whether the selling of Kin tokens 19 would be seen as the selling of a security. Isn't 20 that what was encompassed by a securities law -- 21 A Correct. 22 Q -- risk? 23 Okay. 24 And the Board discussed this during your 25 meeting?</p> <p style="text-align: center;">90</p>	<p>1 A At this time, yes. 2 Q And then, who was the counsel with you 3 at the meeting where you discussed the securities 4 law issue? 5 A Nancy Wojtas. 6 Q Anybody else? 7 A Not that I can recall. 8 Q Was she there in person or on the phone? 9 A I can't recall if this was a sit-down 10 meeting or a call-in meeting. Does it -- it would 11 normally say at the beginning of the board 12 minutes. 13 Q Let's go back. This is just the board 14 deck, right? 15 A Yes, it says, "Board meeting." Yes, so 16 it would have been a call-in meeting. 17 Q You see that from -- 18 A Look at reference 786. 19 Q I'm there. 20 A It says, "Board meeting." So it says, 21 "Join call." 22 Q And where -- where is -- Ms. Wojtas is 23 outside counsel, right? 24 A Yes. 25 Q What firm is she at?</p> <p style="text-align: center;">92</p>

1 A Cooley's.
2 Q Let's go to page ending in 815.
3 And we're back in the "Cryptocurrency"
4 section, right?
5 A Yes.
6 Q This says, "Sales Structure." What is
7 this chart?
8 A This shows the allocation, I guess, for
9 the tokens.
10 Q Okay. And the plan then was to sell 10
11 trillion tokens, right?
12 A Correct.
13 Q The float offered was 10 percent. So
14 Kik would be offering, then, 1 trillion, or
15 10 percent, of the total token supply. Do I have
16 that right?
17 A Right.
18 Q And then below, "Tiered Pricing
19 Discounts," there is a plan to offer some of
20 the -- part of the 10 percent, or 1 trillion
21 tokens, in tranches. Do I have that right?
22 A Right.
23 Q And they vary in the level of discount.
24 A Correct.
25 Q Okay. I'll take that back.

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1 Thank you.
2 (Plaintiff's Exhibit 7 was marked for
3 identification.)
4 BY MR. MENDEL:
5 Q I'm giving you what's been marked
6 Deposition Exhibit 7. In the investigation it was
7 Exhibit 18A, as requested on the front.
8 One question. At a certain point, the
9 Kik Board authorized the issuance of the
10 cryptocurrency or at least the offer of the
11 cryptocurrency, right?
12 A Correct.
13 Q Which board meeting did that
14 authorization take place?
15 A I can't recall exactly which meeting it
16 was.
17 Q Was it in May?
18 A May have been. As I said, I can't
19 recall. I don't know if there's approvals in here
20 or resolutions proposed.
21 Q Okay.
22 A It says May. It says second point is
23 "Approvals requested."
24 Q You're looking at --
25 A Looking at --

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1 Q -- 7?
2 A Yes, the agenda item on 870.
3 Q So based on 870, would you say that it
4 was voted on at this board meeting?
5 A There's -- I don't have the resolutions
6 here in front of me so that's obviously an agenda
7 item, but I don't see the actual resolutions that
8 we were asking for in this. If we go through the
9 document -- so it says here, if we go to slide
10 885 --
11 Q 885, yes.
12 A -- "Kin roadmap: Allocation schedule
13 approval; Announcement at Token Summit. Approval:
14 Kin Whitepaper; Distribution of whitepaper post
15 announcement. Kin Whitepaper Advisors."
16 Q Did the Board approve all these things
17 at the May 23rd meeting?
18 A There would have been a resolution, so
19 I'm not sure if there's a -- there would have been
20 a signed resolution, probably, or minutes
21 identifying that the approval was done.
22 Q Is it fair to say the approval was given
23 before the public announcement?
24 A Yes.
25 Q Was the Board in -- unanimous about the

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1 proposal to make the announcement of Kin?
2 A Yes, it was.
3 Q Did Mr. Holland vote in favor of that?
4 A Yes, he did.
5 Q In Exhibit 7, let's go to -- just to --
6 just to highlight the date here, this is May 23rd,
7 2017 --
8 A Correct.
9 Q -- and the public announcement was a
10 couple days later on May 25th, 2017?
11 Do I have that right?
12 A I believe so. I can't recall the exact
13 date.
14 Q It was in May.
15 A Yes.
16 Q So this is just a few days before the
17 public announcement.
18 A Right.
19 Q Okay.
20 Let's go to the page ending in 871.
21 It says, "Update on crypto, sit-down
22 May 18th, 2017," right?
23 A Yes.
24 Q Is this, then, an excerpt of an internal
25 presentation at Kik that's included in the board

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1 deck?
2 A Correct.
3 Q Below, it says -- below the slide it
4 says, "Thanks, Eran and team." So that's sort of
5 a reference to an internal effort at Kik, right?
6 A Correct.
7 Q At the sit-down, did you go? Did you
8 attend the sit-down?
9 A I believe I did, but I can't recall
10 exactly.
11 Q Did all offices attend by video?
12 A Sorry?
13 Q At the sit-down on May 18th, 2017, did
14 all of Kik's offices attend?
15 A I believe so because we -- Tel Aviv
16 would have been the -- from a timing standpoint,
17 and I think they would have been -- they were on
18 this call.
19 Q If it's a sit-down, it's usually an
20 all-employee-type meeting, right?
21 A Yes.
22 Q Let's go to 872, which is the next page.
23 A The only reason I'm saying that --
24 Q Yes.
25 A -- is there have been meetings where we

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1 have done a sit-down for North America, and then
2 we did another one, I believe, for Tel Aviv just
3 because of time differences sometimes.
4 I think this done was all, but I can't
5 really recall exactly.
6 Q Okay. Fair enough.
7 Looking at page 6872, which is right
8 after the Update on Crypto slide. You see we were
9 close to it before.
10 A Yes.
11 Q You're there?
12 It says, there's a slide -- the slide
13 says, "Where we are," on the left-hand side,
14 "Token Summit NYC." There's a graphic that says,
15 "White Paper," and then on the right side, "Token
16 sale." It's sort of a two-event timeline. Then
17 below, there's language. And below the slide,
18 that's what would have been spoken at the meeting,
19 correct?
20 A Correct.
21 Q It says, "We are one week away from
22 announcing our intention to fundraise." Is this
23 what -- was this from Mr. Livingston, or was
24 somebody else talking here?
25 A This would have been probably

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1 Mr. Livingston.
2 Q Okay. He says, "I'm doing a fireside
3 chat at Token Summit at NYC, and then we're going
4 to move pretty quickly into a roadshow followed by
5 the actual token sale likely in July."
6 A Correct.
7 Q That also was spoken by Mr. Livingston,
8 right?
9 A Correct.
10 Q Because Mr. Livingston was the one who
11 did the Token Summit.
12 A Yes.
13 Q This reflected Kik's plans at the time,
14 correct?
15 A Correct.
16 Q And it says then, "Next Thursday, after
17 we announce, we will be propping up a landing page
18 which will house the main marketing document for
19 our fundraise, the white paper."
20 A Correct.
21 Q And the white paper was Kik's main
22 marketing document for the offering; is that
23 right?
24 A Correct. Well, you say offer. Yes, for
25 the token sale.

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1 Q By "propping up a landing page," what
2 does that mean?
3 A I don't know, really, what that means,
4 quite frankly.
5 Q Was that a landing page on a website?
6 A I imagine so.
7 Q Would that web page have been freely
8 accessible to people on the Internet?
9 A I don't know if we had any sort of
10 restrictions on that one. I can't recall.
11 Q You can't remember any restrictions on
12 access to the white paper, can you?
13 A I can't recall either way.
14 Q Let's go to page 878.
15 It says, "Division." Are you there?
16 A Correct, yes.
17 Q The slide says, "A decentralized
18 ecosystem of digital services for daily life,"
19 right?
20 A Correct.
21 Q And then in the presentation part -- or
22 the notes below, it says, "I'm going to take you
23 through four steps to realizing this vision."
24 A Correct.
25 Q This is still Mr. Livingston speaking?

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<p>1 A I would imagine so, yes.</p> <p>2 Q Then the next page, 879, it says, "Step</p> <p>3 1, create a new cryptocurrency." Let me -- and</p> <p>4 then it says below that, "Kin."</p> <p>5 Was this the first time that employees</p> <p>6 generally at Kik saw the term "Kin"?</p> <p>7 A You know what, I can't really recall if</p> <p>8 this would have been the first time. I'm not sure</p> <p>9 of the timing as to when we finalized the name and</p> <p>10 when it was presented, but it would have --</p> <p>11 Q Take Exhibit 21, which is your</p> <p>12 transcript. I'm going to refer you to page 223.</p> <p>13 Again, it's the small square on the page.</p> <p>14 Look at line 8 starting -- look at the</p> <p>15 testimony starting on line 8 on page 223.</p> <p>16 A Okay.</p> <p>17 Q Then read up to the top of page 224. Do</p> <p>18 you see that?</p> <p>19 A (Document review.)</p> <p>20 Yes.</p> <p>21 Q Does that refresh your memory?</p> <p>22 A Yes.</p> <p>23 Q Okay. You can put the transcript down.</p> <p>24 So do you think that this meeting was</p> <p>25 the first instance in which Kik employees</p> <p style="text-align: center;">101</p>	<p>1 demand would lead to an increase in the value of</p> <p>2 the token; is that right?</p> <p>3 A Yes. Over a period of time, yes.</p> <p>4 Q In your view, the best way for this to</p> <p>5 happen was to have a system where the value would</p> <p>6 increase steadily, right, not through like a spike</p> <p>7 or a drop? You wanted sort of an even increase in</p> <p>8 the value of Kin.</p> <p>9 A Exactly. Stability to it so it's not</p> <p>10 highly volatile.</p> <p>11 Q But the ultimate objective was to go up</p> <p>12 in value, correct?</p> <p>13 A Yes, eventually, yes.</p> <p>14 Q And you hired a consultant to work on</p> <p>15 that with you, or no?</p> <p>16 A We hired a couple consultants. We</p> <p>17 hired -- CoinFund had an economist to help sort of</p> <p>18 take a look at what was required in the economy,</p> <p>19 and then we also hired McKenzie to help with that</p> <p>20 part of it.</p> <p>21 Q Go to the next page, 881.</p> <p>22 A Sorry, there was also a third person.</p> <p>23 It was Bill Raduchel, who was a foundation member.</p> <p>24 He was a Ph.D. in economics from Harvard. And</p> <p>25 that was a lot of his background, too. That's why</p> <p style="text-align: center;">103</p>
<p>1 generally saw the term "Kin"?</p> <p>2 A Yes, I said there, too, I think this is</p> <p>3 the first time.</p> <p>4 Q Then going to page 880 -- this is the</p> <p>5 next slide in the deck -- it says, "Step 2, give</p> <p>6 value to Kin."</p> <p>7 Did Mr. Livingston tell employees during</p> <p>8 the sit-down that the second step was to give</p> <p>9 value to Kin and this would be accomplished by</p> <p>10 integrating Kin into Kik?</p> <p>11 A Yes.</p> <p>12 Q Did he tell the same thing to the Kik</p> <p>13 Board?</p> <p>14 A Yes, he would have.</p> <p>15 Q Did Mr. Livingston tell Kik employees</p> <p>16 that "increased usage means increased demand which</p> <p>17 means increased value"?</p> <p>18 A Yes.</p> <p>19 Q Was that Kik's goal, to have increased</p> <p>20 usage, which would mean increased demand?</p> <p>21 A With the increased usage, I think as I</p> <p>22 describe back then, was the economy's success is</p> <p>23 based on velocity, how many transactions occur,</p> <p>24 and that's driven by increased demand and usage.</p> <p>25 Q The thought was that an increase in</p> <p style="text-align: center;">102</p>	<p>1 we had him on the Foundation -- a proposed</p> <p>2 designee on the Foundation.</p> <p>3 Q When you said "foundation member," what</p> <p>4 do you mean by that?</p> <p>5 A He was a proposed board director member</p> <p>6 of the Foundation.</p> <p>7 Q But he -- did he ever become a director?</p> <p>8 A No. He -- he was supposed to become,</p> <p>9 and then when the SEC thing came out right away</p> <p>10 after the token distribution event, he held off,</p> <p>11 but we did still treat him as though he was a</p> <p>12 foundation board member.</p> <p>13 Q He never had any voting authority for</p> <p>14 the Foundation, did he?</p> <p>15 A No.</p> <p>16 Q And he never had any managerial</p> <p>17 responsibility at Kik, correct?</p> <p>18 A No.</p> <p>19 Q Going to page 881, where it says, "Step</p> <p>20 3, the Kin Rewards Engine."</p> <p>21 A Yes.</p> <p>22 Q So, going down below, where it says, "On</p> <p>23 a high level, here is how this will work," this is</p> <p>24 describing the Kin reward engine, right?</p> <p>25 A Correct.</p> <p style="text-align: center;">104</p>

1 Q So I'll just read the three bullets
2 here. Bullet number 1 says, "60 percent of the
3 total supply of Kin will be allocated to the
4 operation of a Kin Rewards Engine."
5 That's how it was conceived at the time,
6 right?
7 A Yes.
8 Q Then the second bullet, "Periodically,
9 KRE" -- meaning Kin Rewards Engine -- "will unlock
10 and distribute a specific amount of Kin to be
11 shared among all of the digital services that make
12 up the Kin ecosystem," right?
13 A Correct.
14 Q And then finally, the third bullet, "The
15 amount of reward received by each digital service
16 will be calculated by considering the volume of
17 Kin transactions originated from that digital
18 service," right?
19 A Yes.
20 Q These talking points accurately describe
21 Kik's plans for the reward engine, correct?
22 A Correct.
23 Q At the time of this meeting, Kik did not
24 know how the Kin Rewards Engine would run, though,
25 right?

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1 A No.
2 Q And Kik had not created the algorithms
3 necessary to run the rewards engine; is that
4 right?
5 A That's right.
6 Q And the details of the reward engine
7 were not complete at the time of the token
8 distribution event; is that right?
9 A No, they weren't intended to be complete
10 at the time of the token distribution event.
11 Q And they are not complete.
12 A No.
13 Q It was never imagined that they would be
14 complete at the time of the token event?
15 A No.
16 Q And Kik knew that, right?
17 A Yes.
18 Q At this point, the Kin Rewards Engine,
19 it's just a hypothetical, right?
20 A Yes.
21 Q Page 883. Well, let me just --
22 A Can I just take a step back? When you
23 say it was hypothetical, the Kik Rewards Engine,
24 there was still going to be Kin rewards issued but
25 just not through algorithms and that.

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1 Q What do you mean by "Kin rewards issued
2 but not through algorithms"?
3 A I think if you go back to my testimony,
4 I think I talked about it last time, too, is that
5 one of the advisors was William Mougayar, and we
6 had talked about an automated algorithmic rewards
7 engine. And he advised against it initially
8 because he said you don't understand the ecosystem
9 yet at that point in time.
10 But I think he -- it's in the -- I
11 recall reading it in the testimony I gave last
12 time.
13 Q Ah, okay.
14 So how functionally, then, would the
15 issuances be done?
16 A How functionally? It was --
17 Q If you're saying it's not -- the Kin
18 Rewards Engine was conceived as an algorithm,
19 right?
20 A Right.
21 Q Okay. So is your testimony that the
22 rewards operation would go manually?
23 A Yes, I think there was some -- there was
24 an idea that -- I know there were discussions with
25 various potential consortium players, and that was

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1 the intent, was that we would look at the
2 Foundation being independent and would award them
3 at somewhat a discretionary level to start, just
4 to incentivize people to build on the ecosystem.
5 Q Are you aware of this being done, of
6 manual issuances?
7 A I believe they are -- they were done --
8 I can't recall if they were done at that time. I
9 know they are being done.
10 Q Well, you became a foundation director,
11 right?
12 A Right.
13 Q This is skipping ahead. Do you remember
14 any manual issuances being done by the Foundation
15 while you were director?
16 A I don't recall any.
17 Q And you were thinking about it, because
18 your testimony is that there was -- one of your
19 consultants was cautioning Kik against the
20 algorithm at first? Is that what you're saying?
21 A That's correct.
22 Q Mr. Mougayar?
23 A Yes.
24 Q Was it envisioned, then, that the
25 issuances would be done by Kik employees?

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<p>1 A No. It would have been -- the envision 2 would have been done -- it would have been done by 3 the Foundation. 4 Q Did the Foundation ever have any 5 employees while you were there? 6 A No. 7 Q Going to page 882, it says, "Step 4 of 8 the Foundation," right? 9 A Yes. 10 Q That refers to the Foundation that Kik 11 would set up? 12 A Yes. 13 Q Then page 883, the next page, it says, 14 "What this means for Kik," and there's four items 15 listed. The first one is, under Kik, "Create 16 Kin." That's the first thing listed. And it 17 says, "Raise money, better terms," correct? 18 A Correct. 19 Q I'll take that one back. 20 Was that true, raise money, better 21 terms? 22 A It was with -- 23 MR. CADIGAN: Objection. Go ahead. 24 A It was with the presale investors. 25 Q The presale investors were who?</p> <p style="text-align: center;">109</p>	<p>1 A Yes. 2 Q It says under C, "All token users will 3 be eligible to receive -- to a" -- there's a word 4 missing. "All token users will be eligible to a 5 premium sticker pack based on their status, 6 bronze, silver, gold," right? 7 A Yes. 8 Q It should say, "eligible to receive a 9 premium sticker pack," right? 10 A Correct. 11 Q When was the decision made to include an 12 MVP? 13 A I can't recall. 14 Q Was it before the May 23rd board 15 meeting? 16 A I would imagine so because it's being 17 proposed here. 18 Q Was it after the -- was it between the 19 May 4th board meeting that we talked about and 20 this board meeting? 21 A I can't recall that. 22 Q But it had been worked on before this 23 point, right? Fair to say? 24 A Before this point? 25 Q Yes.</p> <p style="text-align: center;">111</p>
<p>1 A The presale investors were the 2 sophisticated, accredited investors that we had. 3 Q Had those investors been identified by 4 the time of this board meeting on May 23rd, 2017? 5 A I can't recall if they had been 6 identified at that time. 7 Q But at this point you were thinking 8 about selling to accredited investors? 9 A Yes. 10 Q I took this away too quickly. Here, I'm 11 going to give it back to you. 12 A Okay. 13 Q Let's go to page 889. 14 You're there, right? It says, 15 "Proposed" -- this is another slide. It says, 16 "Proposed product MVP." 17 A Correct. 18 Q What does MVP stand for? 19 A Minimum viable product. 20 Q And the plan was at this point to sell 21 the tokens to the public once Kik had created an 22 MVP; is that right? 23 A That's correct. 24 Q This is now part of the plan that was in 25 the board report?</p> <p style="text-align: center;">110</p>	<p>1 A Yes. 2 Q Who at Kik made a decision to include an 3 MVP? 4 A I can't really recall. It would have 5 been likely in consultation with counsel so -- but 6 I can't recall who exactly at that time. At this 7 time I was also heavily starting to get involved 8 with purchasing a company called CoinTree. 9 Q Yes. 10 A So that was around this time also. So I 11 wasn't as involved in sort of some of these things 12 as I was in some of the other transactions. 13 Q You were not heavily involved in 14 determining the MVP? 15 A No. That was product people. 16 Q Like Mr. Ben-Ari? 17 A Yes. 18 Q People under his supervision? 19 A Yes, and then with -- in conjunction 20 with Ted and marketing people, I gather. 21 Q Mr. Livingston was involved in that, 22 right? 23 A Yes, I believe so. 24 Q Was one reason for the MVP to satisfy 25 compliance concerns?</p> <p style="text-align: center;">112</p>

<p>1 A I guess that would have been one of the 2 reasons. 3 Q You guess? Are you sure? 4 A Yes, one of the reasons. 5 Q It was believed that by having -- let's 6 go back to the term "minimum viable product." 7 Does that suggest some level of functionality? Is 8 that what the idea is? 9 A That's correct. 10 Q Was it believed that by having some 11 level of functionality, that it called an MVP, 12 that Kik would be better able to achieve legal 13 compliance? 14 A That would be one. 15 (Plaintiff's Exhibit 42 was marked for 16 identification.) 17 BY MR. MENDEL: 18 Q I'm presenting you with what's been 19 marked Deposition Exhibit 42. 20 This is an email from Mr. Ben-Ari on 21 May 17th, 2017, to Tanner Philp. He's at Kik, 22 right? 23 A Right. 24 Q You're listed on the cc line, right? 25 A Yes.</p> <p style="text-align: center;">113</p>	<p>1 quickly. 2 A Wanted a product that could be developed 3 quickly that would satisfy, as we point out here, 4 compliance, be first to market, and then also 5 establish that it was technically feasible. 6 Q Did Kik choose a theme for the MVP? 7 A Sorry, what do you mean by "theme"? 8 Q Well, chose -- the MVP included 9 accessing sticker packs, right? 10 A Correct. 11 Q That was the central idea? 12 A That was one, and then the ability to 13 see your wallet and hold Kik coin and have that 14 integrated with the messenger. 15 Q So it would be sort of reading your 16 balance. 17 A Correct. 18 Q And then showing other people that you 19 had a particular balance. 20 A Yes. 21 Q Almost like sending them a screenshot of 22 your -- of how many Kin that you had; is that 23 right? 24 A No, you wouldn't show how many Kin you 25 specifically had.</p> <p style="text-align: center;">115</p>
<p>1 Q So you received this? 2 A Yes. 3 Q Mr. Ben-Ari says in the second 4 paragraph, "The MVP has an objective to satisfy 5 compliance requirements," correct? 6 A Yes. 7 Q That was the comment that was the 8 consensus at Kik, right? 9 MR. CADIGAN: Objection. 10 Q That's what you understood one of the 11 objectives to be? 12 A That was one of the objectives. 13 Q Another objective of the MVP, as Kik 14 designed it, was to allow Kik to be first to get 15 to market, right? 16 A That's correct. 17 Q Why was it important to get to market 18 quickly? 19 A From a business standpoint, it's -- you 20 always want to be first to market with a product. 21 Q So Kik wanted to design something that 22 would facilitate that, right? 23 A Yes. 24 Q Meaning you should develop a product -- 25 you wanted a product that could be developed</p> <p style="text-align: center;">114</p>	<p>1 Q You would show a sticker instead. 2 A Yeah, you would have a status, and that 3 would sort of give you sort of status in the 4 ecosystem. 5 Q Status was the number of Kin you held. 6 A Exactly. 7 Q It's kind of like showing your bank 8 account, isn't it? 9 A Yes, I guess so. 10 Q And what was the theme of the sticker? 11 A The theme? 12 Q Was there like some sort of common 13 thread to the sticker packs that Kik developed? 14 Honey badgers? 15 A Yeah, I can't recall the characters 16 exactly. You're talking about the characters when 17 you're talking about themes? 18 Q Yes. That's all I'm asking. 19 A Yes. 20 Q Okay. 21 Being first to market was important 22 because that would give Kik more publicity; isn't 23 that right? 24 A That's correct. 25 Q And other MVP options could have taken</p> <p style="text-align: center;">116</p>

<p>1 longer?</p> <p>2 A Yes, likely. So when you say the</p> <p>3 objective of getting publicity, objective of</p> <p>4 getting publicity is to attract other users and</p> <p>5 developers to the ecosystem.</p> <p>6 Q You thought the MVP was limited; isn't</p> <p>7 that right?</p> <p>8 MR. CADIGAN: Objection.</p> <p>9 A I don't know. Where do I say that?</p> <p>10 Q Well, I'm just asking for your</p> <p>11 impressions now. Don't you think that the MVP was</p> <p>12 limited?</p> <p>13 MR. CADIGAN: Objection.</p> <p>14 A No, not necessarily. I mean, the MVP --</p> <p>15 the purpose of the MVP was threefold. The fact</p> <p>16 that we were able to do and build a cryptocurrency</p> <p>17 in a transactional environment was a big step. No</p> <p>18 one had done that yet at that stage. So that was</p> <p>19 really important for us.</p> <p>20 Q You were not a big sticker user, right?</p> <p>21 A No, not at my age, no.</p> <p>22 Q So you didn't have a lot of firsthand</p> <p>23 knowledge of what the MVP would mean for users,</p> <p>24 right?</p> <p>25 A No, because -- no, exactly.</p> <p style="text-align: center;">117</p>	<p>1 Q A price that a person paid, an</p> <p>2 accredited investor, the thought was that the</p> <p>3 price that the accredited investor paid to enter</p> <p>4 into a SAFT, allowing for the receipt of Kin,</p> <p>5 would be lower than the price that somebody who</p> <p>6 bought in the public sale would pay, correct?</p> <p>7 MR. CADIGAN: Objection.</p> <p>8 A Yes.</p> <p>9 Q Let's go to -- still on Exhibit 7, page</p> <p>10 892.</p> <p>11 A Do you want 42 back or no?</p> <p>12 Q Yes, please, thank you.</p> <p>13 A Sorry, which page?</p> <p>14 Q Bates number ending in 892.</p> <p>15 It says "Sales Process," correct?</p> <p>16 A Correct.</p> <p>17 Q And "Total Raise, Target, 100 million."</p> <p>18 A Correct.</p> <p>19 Q And then it's broken down. "Presale, up</p> <p>20 to 50 million." Is that what it says?</p> <p>21 A Correct.</p> <p>22 Q And then "Token Distribution Event, 50</p> <p>23 to 75 million," right?</p> <p>24 A Correct.</p> <p>25 Q Those breakdowns appear on the same</p> <p style="text-align: center;">119</p>
<p>1 Q And you can't comment on whether the</p> <p>2 MVP, as a product matter, was a good product,</p> <p>3 right --</p> <p>4 A No.</p> <p>5 Q -- because you don't have the experience</p> <p>6 for that.</p> <p>7 A That's correct.</p> <p>8 Q A decision -- you referred to presale</p> <p>9 investors, right? So a decision was made to offer</p> <p>10 digital tokens through something called Simple</p> <p>11 Agreements for Future Tokens, or SAFTs?</p> <p>12 A Correct.</p> <p>13 Q Can you just describe what a SAFT was.</p> <p>14 A SAFT is a security agreement for</p> <p>15 receiving tokens at a later date.</p> <p>16 Q Let's go to -- let me just ask you. As</p> <p>17 part of that agreement that you just described,</p> <p>18 investors entering into a SAFT would buy the Kin</p> <p>19 at a discount; is that right?</p> <p>20 MR. CADIGAN: Objection.</p> <p>21 Q Was there a discount involved?</p> <p>22 MR. CADIGAN: Objection.</p> <p>23 A There was a discount involved, yes. And</p> <p>24 there were other terms that were vesting terms</p> <p>25 with it.</p> <p style="text-align: center;">118</p>	<p>1 slide, right?</p> <p>2 A Correct.</p> <p>3 Q The presale, that was to the accredited</p> <p>4 investors, right?</p> <p>5 A That's correct.</p> <p>6 Q So at this point in time, as you've just</p> <p>7 said, Kik's plan was to sell the tokens through a</p> <p>8 presale stage and through a token distribution</p> <p>9 event.</p> <p>10 A Correct.</p> <p>11 Q Was the token distribution event to the</p> <p>12 general public?</p> <p>13 A Yes.</p> <p>14 Q Let's go to the next page. Yes?</p> <p>15 A Sorry, when you say "general public,"</p> <p>16 like, they had to register, so -- but, yes.</p> <p>17 Q The token distribution event</p> <p>18 participants had to preregister for the event.</p> <p>19 A That's correct. They had pre KYC,</p> <p>20 right.</p> <p>21 Q And they had to go through steps and</p> <p>22 processes.</p> <p>23 A Exactly.</p> <p>24 Q But it was at least for -- the</p> <p>25 preregistration process was basically open to</p> <p style="text-align: center;">120</p>

<p>1 anybody. 2 A No. 3 Q Subject to geographic -- 4 A Correct. 5 Q -- carve-outs. 6 A Correct. Yes. 7 Q Okay. I got that right. 8 A Yes. 9 Q But there was one plan to raise 10 \$100 million, right? There weren't several plans 11 to raise \$100 million, just one plan to raise 12 \$100 million. 13 A Well, yes, I guess you could say there 14 were one plan. There were two sections to it. 15 Q Let's go to page 893. This is a slide 16 that says "Token sales structure soft cap." This 17 is -- we've seen something like this in a prior 18 board deck, right? 19 A Uh-hmm. Yes. 20 Q And this has been revised. The token 21 supply is \$10 trillion tokens, right? 22 A Yes. 23 Q And the float offered is still 24 10 percent? 25 A Correct.</p> <p style="text-align: center;">121</p>	<p>1 Q Flip back to page 886. 2 It says, "Presale timeline," correct? 3 A Correct. 4 Q And this is the plan for selling to 5 accredited investors? 6 A Correct. 7 Q Does it reflect a roadshow? Under "Key 8 Actions," so if you go down several lines, you'll 9 see "Key Actions," and then under "Mid June, New 10 York and Toronto roadshow." 11 A Yes, I'm not sure, like -- I describe it 12 as a roadshow. We had meetings set up, but there 13 was no, like -- outside of an event where Ted -- 14 like where he launched the thing originally. Most 15 of these were just meetings set up. 16 Q But the slide says "roadshow." 17 A Yes, that's correct. 18 Q And then it says -- and then under "End 19 of June" it says, "TechCrunch: Shenzhen," correct? 20 A Yes. 21 Q "China and Japan roadshow," right? 22 A Correct. 23 Q "San Francisco roadshow"? 24 A Yes. 25 Q Were those events where Ted spoke</p> <p style="text-align: center;">123</p>
<p>1 Q And then it has different discounts 2 listed below that, under "Tranches," right? 3 A Correct. 4 Q And, now, some of the tranches have 5 "SAFT" listed next to them, correct? 6 A Correct. 7 Q But not all the tranches, right? 8 A Correct. 9 Q All right. It says -- there's two 10 tranches that have SAFT, one SAFT, and then the 11 other SAFT, two, right? 12 A Correct. 13 Q Then it says, "First public tranche, 14 20 percent." 15 A Correct. 16 Q Okay. And then "10 percent, 75 to 100 17 million, last chance for discounts," right? 18 A Correct. 19 Q And then zero percent, the 100 to 125 20 million, there would be no discount? 21 A Correct. 22 Q So as envisioned in this document, then, 23 discounts weren't necessarily limited to people 24 who entered into SAFTs. 25 A Correct.</p> <p style="text-align: center;">122</p>	<p>1 publicly? 2 A I can't recall if he did or not, like I 3 wasn't on those, Shenzhen and Japan. I think he 4 was going over for a conference, but I can't 5 recall if he spoke. 6 Q But these are describing also the 7 presale efforts, correct? 8 A Correct. 9 Q So they were happening -- well, okay. 10 Fine. 11 Once a SAFT participant received Kin, 12 was there any restriction on what the participant 13 could do with the Kin? 14 A Restriction in the sense of? 15 Q Were there resale restrictions? 16 MR. CADIGAN: Objection. 17 A I can't recall offhand. 18 Q You can't remember, sitting here, that 19 there were any resale restrictions on Kin, right? 20 A No, I can't recall. 21 Q Why don't you turn to page 214 of 22 Exhibit 21. 23 Start on line 7. Just let me know after 24 you've read to -- pick line 12, just 7 to 12. 25 Does that refresh your memory?</p> <p style="text-align: center;">124</p>

<p>1 A Yes.</p> <p>2 Q What's your memory now as to whether</p> <p>3 there were restrictions on holding Kin?</p> <p>4 A It says here that there was no</p> <p>5 restrictions on them, and we had vesting on all of</p> <p>6 the presale investors in order to prevent that</p> <p>7 sort of scenario happening, which I assume was to</p> <p>8 avoid having everybody sell everything right at</p> <p>9 the start.</p> <p>10 Q Well, when you say "vesting," though --</p> <p>11 A They couldn't sell any -- half of their</p> <p>12 holdings, what they bought, they couldn't sell</p> <p>13 them for a year, or they --</p> <p>14 Q Because they didn't receive them.</p> <p>15 A Yes, at that rate, correct.</p> <p>16 Q But what about the Kin they did receive?</p> <p>17 They received half the Kin right away.</p> <p>18 A They could sell those, that's correct.</p> <p>19 Q Right away.</p> <p>20 A Yes.</p> <p>21 Q I'll take 36 back. I'm sorry to see --</p> <p>22 I'm sure you're sorry to see it go but ...</p> <p>23 That was -- I'm sorry, I just took</p> <p>24 Exhibit 7 back from you. Then what's the other --</p> <p>25 you have no other exhibits in front of you.</p> <p style="text-align: center;">125</p>	<p>1 A Yes.</p> <p>2 Q You read drafts of that before it was</p> <p>3 issued, right?</p> <p>4 A Yes.</p> <p>5 Q And that's the final one?</p> <p>6 A Okay.</p> <p>7 Q You agree that's the final one?</p> <p>8 A Yes.</p> <p>9 Q Okay. And this was published on Kik's</p> <p>10 website?</p> <p>11 A I believe so.</p> <p>12 Q Kik's website was freely accessible on</p> <p>13 the Internet, correct? You didn't need to</p> <p>14 register to get on Kik's website, did you?</p> <p>15 A I can't recall that, actually.</p> <p>16 Q Look at page 239 of your transcript at</p> <p>17 Exhibit 21.</p> <p>18 A Yes.</p> <p>19 Q Then look at line 22 through 24, and</p> <p>20 then keep reading to the top of page 240. Let me</p> <p>21 know if that refreshes your memory.</p> <p>22 A Yes.</p> <p>23 Q So Kik's website was freely accessible,</p> <p>24 right?</p> <p>25 A Yes.</p> <p style="text-align: center;">127</p>
<p>1 A No, these are transcripts.</p> <p>2 Q Kik made its announcement of Kin in late</p> <p>3 May 2017, correct?</p> <p>4 A Correct.</p> <p>5 Q At the Token Summit in New York City?</p> <p>6 A Correct.</p> <p>7 Q Were you in New York at the time of the</p> <p>8 announcement?</p> <p>9 A Yes.</p> <p>10 Q Did you attend the Token Summit where it</p> <p>11 was announced?</p> <p>12 A I was hoping to, but I didn't.</p> <p>13 Q Kik published the white paper at the</p> <p>14 same time?</p> <p>15 A I believe so, yes.</p> <p>16 (Plaintiff's Exhibit 12 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. MENDEL:</p> <p>19 Q I'm providing you what's been marked</p> <p>20 Deposition Exhibit 12, marked Investigation</p> <p>21 Exhibit No. 2.</p> <p>22 Is this the white paper?</p> <p>23 A Correct.</p> <p>24 Q Take a minute and look at it if you need</p> <p>25 to.</p> <p style="text-align: center;">126</p>	<p>1 Q Okay, great. Thanks. You can put that</p> <p>2 down.</p> <p>3 Who was the white paper's intended</p> <p>4 audience?</p> <p>5 MR. CADIGAN: Objection.</p> <p>6 A I can't really recall who.</p> <p>7 Q Was the white paper directed toward the</p> <p>8 general public?</p> <p>9 A I can't remember how we marketed it, if</p> <p>10 we marketed it at all at that time. As I said, I</p> <p>11 wasn't involved in the marketing side of the</p> <p>12 equation at this time.</p> <p>13 Q Understood. And it's been another year</p> <p>14 since you testified, right?</p> <p>15 A Yes, two years since -- two and a half</p> <p>16 years, actually.</p> <p>17 Q Okay. So, here, let's go back to the</p> <p>18 transcript, page 244.</p> <p>19 A Yes.</p> <p>20 Q You remembered the events more</p> <p>21 accurately or better last year, right, during your</p> <p>22 testimony?</p> <p>23 A Yes, correct.</p> <p>24 Q And so let's go to page 244, line 12.</p> <p>25 Are you there?</p> <p style="text-align: center;">128</p>

<p>1 A Yes.</p> <p>2 Q Just read the page -- line 23.</p> <p>3 A Yes.</p> <p>4 Q So, would you agree, based on your prior</p> <p>5 testimony, that the white paper's intended</p> <p>6 audience included the general public --</p> <p>7 MR. CADIGAN: Objection.</p> <p>8 Q -- as you understood it?</p> <p>9 Let me just ask the question again. As</p> <p>10 you understood the efforts of the marketing team</p> <p>11 at Kik, did you understand the white paper's</p> <p>12 intended audience to include the general public?</p> <p>13 A When you say "general public," like our</p> <p>14 users or --</p> <p>15 Q The public generally.</p> <p>16 A I guess so.</p> <p>17 Q And was another target people who would</p> <p>18 participate via the SAFT?</p> <p>19 A Yes, presale investors.</p> <p>20 Q Together. They were all included,</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q Then let's go to pages 11 to 15 of the</p> <p>24 white paper.</p> <p>25 It says on page 11, Kik integration in</p> <p style="text-align: center;">129</p>	<p>1 A Correct.</p> <p>2 Q Of 2017, right?</p> <p>3 A Yes.</p> <p>4 Q Could people go into the Kik Messenger</p> <p>5 app and use their Kin tokens to do any of the</p> <p>6 things that are described in these pages that we</p> <p>7 just looked at?</p> <p>8 A Well, you could have -- I know that</p> <p>9 somebody had actually been selling, like, not in</p> <p>10 the digital side, but had been selling sunglasses,</p> <p>11 as an example, using KikCoin -- Kin Coin, but I</p> <p>12 don't think -- none of these examples were there</p> <p>13 at the time.</p> <p>14 Q At the time, okay. And nothing in the</p> <p>15 white paper. Kik app users couldn't do any of the</p> <p>16 things described in the white paper at the time of</p> <p>17 the token distribution --</p> <p>18 A No.</p> <p>19 Q -- event?</p> <p>20 MR. CADIGAN: Objection.</p> <p>21 Q Is that a no?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q And the sunglass example, the sunglass</p> <p>24 example isn't in the white paper, is it?</p> <p>25 A No.</p> <p style="text-align: center;">131</p>
<p>1 Kin. I'm sorry, I misspoke. "Kin integration in</p> <p>2 Kik."</p> <p>3 A Yes.</p> <p>4 Q We have on page 11, "An earnable</p> <p>5 currency." That's a subtitle, right?</p> <p>6 A Yes.</p> <p>7 Q And then in the next pages we have use</p> <p>8 cases, right, or proposed use cases?</p> <p>9 A Proposed use cases, yes.</p> <p>10 Q These weren't actually implemented at</p> <p>11 the time, right?</p> <p>12 A No, they say, like, "example."</p> <p>13 Q Yes, of what could happen or --</p> <p>14 A Exactly.</p> <p>15 Q "Kin wallet," "Ethereum settlement</p> <p>16 layer," "Kin economy and prospective use cases."</p> <p>17 That was on page 12. Those were subheadings. And</p> <p>18 then, where it says "prospective use cases," we</p> <p>19 have a number of examples on pages 13 through 15,</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q All right.</p> <p>23 So looking at these pages, at the time</p> <p>24 of the token distribution event -- and just going</p> <p>25 ahead, that was in September, right?</p> <p style="text-align: center;">130</p>	<p>1 Q And, to your knowledge, when could</p> <p>2 people buy sunglasses using Kin?</p> <p>3 A I can't recall the exact date, but I</p> <p>4 know people in Tel Aviv actually made purchases of</p> <p>5 those sunglasses.</p> <p>6 Q After the distribution event.</p> <p>7 A Yes.</p> <p>8 Q Through Kik Messenger or outside on the</p> <p>9 general market?</p> <p>10 A Outside.</p> <p>11 Q Outside the Kik Messenger?</p> <p>12 A Exactly.</p> <p>13 Q Did the white paper include the</p> <p>14 description of the MVP that we saw earlier in the</p> <p>15 board presentation?</p> <p>16 A I don't believe so. Can you just give</p> <p>17 me a second?</p> <p>18 Q Take your time.</p> <p>19 A No, it didn't.</p> <p>20 Q On the same trip to New York for the</p> <p>21 public announcement, did you have private meetings</p> <p>22 with others about Kin?</p> <p>23 A Yes.</p> <p>24 Q These were prospective participants in</p> <p>25 the private sale, right?</p> <p style="text-align: center;">132</p>

1 A Correct.
2 Q Did you meet with Dan Morehead --
3 A We did.
4 Q -- of Pantera?
5 A We did.
6 Q That was at Kik's New York offices?
7 A We did.
8 Q And did you meet with a group called
9 Maple at a Manhattan Starbucks?
10 A Yes.
11 Q That was the same trip, right?
12 A Yes.
13 Q Following the announcement, Kik went
14 ahead and did a roadshow; isn't that right?
15 A We met -- we had other meetings. I
16 mean, how do you -- how do you describe a
17 roadshow?
18 Q I'm using Kik's words.
19 A Okay. Yeah.
20 Q It says, "from roadshow."
21 A I think it's an improper term, but we
22 had meetings for -- with presale investors.
23 Q Did you -- was there -- were there
24 presentations at conferences to people other than
25 accredited investors?

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1 A I don't know. I didn't attend any of
2 those presentations or conferences. I didn't even
3 get into May one so ...
4 Q You participated in some of the meetings
5 on the road.
6 A I was -- the meeting that you -- two
7 meetings you just described, I participated in
8 with Dan Morehead, which was in the Toronto
9 office -- New York office. And the meeting with
10 Maple that I was in was sort of an ad hoc
11 introduction and we met with them at the
12 Starbucks. We didn't get into the conference so
13 we went over to the Starbucks, and we were sitting
14 there, and someone came along and introduced us to
15 Maple.
16 Q How did the CFO not get into the
17 conference?
18 A It was a pretty -- William Mougayar was
19 pretty embarrassed, but what happened was they had
20 more people coming in than what the fire
21 regulations allowed. So the building security
22 themselves shut a number of people out. It was
23 not a pretty scene.
24 Q It was a widely attended event.
25 A Well, because people came from, yes, all

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1 over the world for that event.
2 Q I'll take back 12.
3 As Kik -- as the Kin project moved
4 forward, was it your job to keep the Board updated
5 on certain aspects of the project?
6 A Yes, in the capacity as the CFO.
7 (Plaintiff's Exhibit 45 was marked for
8 identification.)
9 BY MR. MENDEL:
10 Q I have given you what's been marked
11 Deposition Exhibit -- I'll take that back.
12 I'm good. Okay, here is 45 back.
13 Sorry.
14 A That's okay.
15 Q So this was previously marked
16 Investigation Exhibit 156. And it's a three-page
17 email chain, right?
18 A Uh-hmm.
19 Q Okay. And the lead, the top email, most
20 recent, on June 12th, 2017, is from you to the Kik
21 Board, including Paul Holland, right?
22 A Uh-hmm. Yes.
23 Q And it says, "Board meeting materials"?
24 A Yes.
25 Q So these were sent in advance of the

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1 meeting, right?
2 A Correct.
3 Q This was an example of you keeping the
4 Board updated?
5 A Yes.
6 Q And then down below, there's embedded --
7 same day, June 12th, 2017, there's an email from
8 Michelle Dent to the Kik Board. Is Ms. Dent an
9 assistant?
10 A Yes.
11 Q She's sending it on your behalf, right?
12 A Yes.
13 Q And the message is "Gentlemen, the main
14 purpose for this meeting is to provide you more
15 insight into the proposed Kin offering and the
16 regulatory hurdles we are navigating," right?
17 A Correct.
18 Q You wrote that, right?
19 A Yes.
20 Q "At this time we have approximately
21 30 million in purchases, i.e., rights to acquire
22 Kin in the public offering committed in executed
23 term sheets and another 13 million in email
24 commitments. So the presale is moving quite
25 quickly, and we would like the Board approvals

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<p>1 necessary to be able to close on the presales 2 quickly." 3 That reflected the status at the time? 4 A Yes. 5 Q And that's what you asked the Board for? 6 A Correct. 7 Q And then also there's -- under -- just 8 skipping, down below, "The following documents are 9 attached and will help guide the Board on its 10 approvals. 1, Kin legal risk assessment 11 memorandum that Cooley has provided for your 12 review." 13 Did I read that correct? 14 A Correct. 15 Q Was there a legal risk memo that you 16 sent? 17 A Yes. 18 Q Along with a form of the SAFT, right? 19 A Yes. 20 Q And a draft of the private placement 21 memorandum. 22 A Correct. 23 Q Those hadn't been finalized. 24 A No, because it was a draft form. 25 Q Okay. So no one had signed on to the</p> <p>137</p>	<p>1 A Correct. 2 Q And this is a June 15th email from you 3 to Mr. Livingston, correct? 4 A Correct. 5 Q And it's forwarding an email from Dan 6 Morehead to you and Tanner Philp same day, 7 June 15th, 2017. And Mr. Morehead, just to remind 8 us, is -- he's with Pantera, right? 9 A Correct. 10 Q Was Pantera the lead accredited 11 investor? 12 A They were the largest, yes. 13 Q Did they buy the most? 14 A Yes. 15 Q I'm skipping down below to a section of 16 the email written from Mr. Morehead to you. It 17 says, "ICO as planned rather than Q1." 18 A Correct. 19 Q So there was discussion, then, about 20 postponing the ICO. 21 A Right. 22 Q And ICO is the Initial Coin Offering, 23 right? 24 A Well, we referred to it as TDE. 25 Q TDE meaning what?</p> <p>139</p>
<p>1 SAFT yet? 2 A I gather not by this. 3 Q But you had the commitments. 4 A Yes. 5 Q You also had discussions in June about 6 when to hold the token distribution event, 7 correct? 8 A Where does it say that? 9 Q Not in that one. I'll take it back. 10 Sorry. Didn't mean to -- 11 A Okay. 12 Q -- trick you there. 13 Just in general, from your memory, in 14 June -- let me ask it again. In June 2017, did 15 the Board also have discussions about when to hold 16 the token distribution event? 17 A I would imagine it was discussed as to 18 when it would occur, but as far as a specific 19 date, I'm not sure if that was defined at that 20 meeting. 21 (Plaintiff's Exhibit 47 was marked for 22 identification.) 23 BY MR. MENDEL: 24 Q I'm giving you what's been marked 25 Deposition Exhibit 47.</p> <p>138</p>	<p>1 A Token distribution event. 2 Q And Mr. Morehead refers to it as an ICO? 3 A Correct. 4 Q That's short for Initial Coin Offering? 5 A Yes. 6 Q Were they used interchangeably? 7 MR. CADIGAN: Objection. 8 A Not by us. 9 Q Not by you. 10 Did others -- did accredited investors 11 use the term "ICO"? 12 A I can't recall other than looking at 13 this. 14 Q Does this email reflect an earlier 15 discussion with Mr. Morehead? 16 A Yes. 17 Q You had asked for his input on delaying 18 the token distribution event to build more 19 functionality into the token; isn't that right? 20 A I don't recall if that was the delay or 21 the purpose of the call, whether it was to build 22 more or -- I can't really recall where we were on 23 the MVP at that point in time. 24 Q Can you take out -- we're now on 25 Exhibit 22.</p> <p>140</p>

<p>1 A 22, okay.</p> <p>2 Q This is your -- day 2 of your</p> <p>3 transcript, right? Can you look at page 342 in</p> <p>4 Exhibit 22, line 8.</p> <p>5 Can you read for me, to yourself,</p> <p>6 lines 8 to 15?</p> <p>7 A Yes.</p> <p>8 Q Does this refresh your memory of what --</p> <p>9 A Yes.</p> <p>10 Q Okay. So is it the case, then, that you</p> <p>11 were --</p> <p>12 A Can I just finish reading the rest of</p> <p>13 the --</p> <p>14 Q Absolutely, please.</p> <p>15 A (Document review.)</p> <p>16 Okay.</p> <p>17 Q So, then, you were discussing with</p> <p>18 Mr. Morehead about his input on -- for his input</p> <p>19 on delaying the TDE to build more functionality</p> <p>20 into the token, right?</p> <p>21 A Correct.</p> <p>22 Q And Mr. Morehead responded, "Who is the</p> <p>23 second African-American to play MLB," right?</p> <p>24 A Yes.</p> <p>25 Q And you understood from Mr. Morehead</p> <p style="text-align: center;">141</p>	<p>1 A Yeah.</p> <p>2 Q Weren't you aware of discussion in the</p> <p>3 marketplace about the SEC coming out with</p> <p>4 guidance -- with some sort of statement about</p> <p>5 cryptocurrencies?</p> <p>6 A There was sort of some discussion, yes.</p> <p>7 Q You were anticipating that, weren't you?</p> <p>8 A I was anticipating that was through</p> <p>9 attorney discussions.</p> <p>10 Q Okay. It appears that Mr. Morehead was</p> <p>11 also referencing that; is that right?</p> <p>12 A Yes.</p> <p>13 Q I'll take that back.</p> <p>14 (Plaintiff's Exhibit 49 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. MENDEL:</p> <p>17 Q I'm giving you what's been marked</p> <p>18 Deposition Exhibit 49. That's Investigation</p> <p>19 Exhibit 181.</p> <p>20 And 49 is an email from Nancy Wojtas to</p> <p>21 you, just to you, on June 14th, 2017.</p> <p>22 She's the lawyer at Cooley, correct?</p> <p>23 A Correct.</p> <p>24 Q She's outside counsel?</p> <p>25 A Correct.</p> <p style="text-align: center;">143</p>
<p>1 that he did not want to be -- that was a</p> <p>2 rhetorical question.</p> <p>3 A Right.</p> <p>4 Q Right?</p> <p>5 You understood from Mr. Morehead that he</p> <p>6 did not want Kik to postpone its TDE, right?</p> <p>7 A That's correct.</p> <p>8 Q Because he wanted the name -- the name</p> <p>9 recognition of being first.</p> <p>10 A Correct.</p> <p>11 Q And you understood that Mr. Morehead</p> <p>12 thought being first to market was really critical</p> <p>13 to the success of the token, right?</p> <p>14 A Correct. And that's as we discussed</p> <p>15 earlier, that being first to market was really</p> <p>16 important.</p> <p>17 Q He wrote also in this same email, "The</p> <p>18 ICO market is white-hot. There's also a chance</p> <p>19 that the ICO window closes adverse SEC reaction."</p> <p>20 Correct?</p> <p>21 A Correct, that's what he said.</p> <p>22 Q And around this time there was talk in</p> <p>23 the marketplace that the SEC was going to be</p> <p>24 issuing guidance, correct?</p> <p>25 MR. CADIGAN: Objection.</p> <p style="text-align: center;">142</p>	<p>1 Q And she's sending you -- it says,</p> <p>2 "Peter, here is the draft, copied below, on the</p> <p>3 attached org document."</p> <p>4 So she's sending you a draft email.</p> <p>5 A Uh-hmm.</p> <p>6 Q And this is -- at the top she states, or</p> <p>7 in the draft email -- "At the last board meeting,</p> <p>8 before Fred and Jim had to drop off the call, the</p> <p>9 proposed course of action suggested to ensure</p> <p>10 minimum risk to the company and the Board, in</p> <p>11 recognition of the frothiness of the</p> <p>12 cryptocurrency markets generally at this time, was</p> <p>13 to conduct 100 million presale and eliminate the</p> <p>14 public token distribution event. The conversion</p> <p>15 of the SAFT rates into Kin would occur at the time</p> <p>16 Kin Ecosystem was fully functional versus at the</p> <p>17 time there was a minimum viable product."</p> <p>18 Correct?</p> <p>19 A Correct.</p> <p>20 Q She wrote that?</p> <p>21 So, according to this email, the Board</p> <p>22 considered just selling to accredited investors</p> <p>23 until the Kin Ecosystem was "fully functional"; is</p> <p>24 that right?</p> <p>25 A Correct.</p> <p style="text-align: center;">144</p>

<p>1 Q You have no reason to doubt that the 2 Board consider this proposal, right? 3 A Right. 4 Q In fact, it's likely the Board did 5 consider this proposal. 6 A They did. 7 Q That's not the option the Board adopted, 8 right? 9 A That's right. 10 Q It decided -- the Board proceeded with 11 the token distribution event before the Kin 12 Ecosystem was fully functional, right? 13 A Well, it depends what you're defining as 14 fully functional. I can't recall what we were 15 describing as fully functional versus what the 16 minimum viable product was. 17 Q Well, it decided to proceed with the TDE 18 before what you considered full functionality was, 19 right? 20 A I can't recall what we discussed in 21 terms of full functionality versus minimum viable 22 product. 23 Q The Board thought the MVP was 24 sufficient? 25 A I thought it was sufficient for what we</p> <p>145</p>	<p>1 Q Who created this document? 2 A I honestly can't remember if I did or 3 someone else in the meeting did. 4 Q Is it memorializing what was discussed 5 in a meeting? 6 A Yes. 7 Q There's a bubble comment to the right 8 that says, "Assigned to Peter Heinke," right? 9 A Yes. 10 Q So you were in this meeting, correct? 11 A Correct. I think I was in the meeting. 12 Q You later reviewed the document -- if 13 you didn't write it, you definitely reviewed the 14 document. 15 A Yes, I did. 16 Q So that summer, the summer of 2017, you 17 worked to increase coverage for Kik's officers and 18 directors? 19 A Correct. 20 Q And then under "Topics of Discussion" in 21 Exhibit 53, there's a number of bullets. The 22 first bullet is "Compliance is our biggest 23 concern." 24 A Correct. 25 Q The third bullet says, "View the raise</p> <p>147</p>
<p>1 needed it for, which are the things that we 2 described before. 3 Q I'll take that back. 4 (Plaintiff's Exhibit 53 was marked for 5 identification.) 6 BY MR. MENDEL: 7 Q I'm providing you, Mr. Heinke, with 8 what's been marked Deposition Exhibit 53, 9 previously in the investigation marked as 183. 10 This is a document that says at the top, 11 "6-13-17, Andy Sloan, Magnes, Inc., Re: Initial 12 Kin Insurance Meeting Notes," right? 13 A Correct. 14 Q What's your understanding of what this 15 document is? 16 A This was a discussion of what sort of 17 insurances we should probably take a look at 18 having. 19 Q Who is Andy Sloan? 20 A He's the principal of the brokerage -- 21 insurance broker Magnes. They have been our 22 insurance company since pretty much day one -- or 23 broker. 24 Q That's who you continue to work with? 25 A That's correct.</p> <p>146</p>	<p>1 as a security." And then the fourth bullet down 2 states, "Complying with Howey test (viewed as a 3 security)," right? 4 A Correct. 5 Q And then the third bullet that said 6 "View the raise as a security," there's a dotted 7 line to the bubble "Commented [1]," and the bubble 8 comment says, "The SAFT is a security, however, 9 the tokens are not a security. Peter@kik.com can 10 you confirm?" 11 And this was assigned to you? 12 A Yes. 13 Q So this was an issue that you worked on. 14 A Yes. 15 Q And then there's a comment at -- there's 16 another comment -- bubble comment directly below, 17 and this corresponds to the fourth bullet in the 18 document, "Complying with Howey test (viewed as a 19 security)." 20 It says, "Yes, we used the Howey test." 21 That was you responding? 22 A I believe so, yes. 23 Q And you discuss with Andy Sloan of 24 Magnes whether Kik was complying with the Howey 25 test, right?</p> <p>148</p>

<p>1 A I believe so.</p> <p>2 Q And what did you tell Mr. Sloan in that</p> <p>3 regard?</p> <p>4 A I can't recall exactly what I said at</p> <p>5 the time. I mean, if you go further down, our</p> <p>6 bigger risk that we defined at the time was the</p> <p>7 money laundering and AML.</p> <p>8 Q Which appears first, "view the raise as</p> <p>9 a security" or the money-laundering concerns?</p> <p>10 A Howey appears first, but if you look at</p> <p>11 it, the other one that's identified is the</p> <p>12 high-risk issue.</p> <p>13 Q Where does it say high-risk?</p> <p>14 A "High-risk issues - Money laundering.</p> <p>15 AML risk. Policies in place to mitigate risk."</p> <p>16 Q That's the seventh bullet down, right?</p> <p>17 A Yes. I don't think there was any</p> <p>18 priority with respect to where the dot existed in</p> <p>19 that discussion.</p> <p>20 Q This was dated in June?</p> <p>21 A Correct.</p> <p>22 Q Down below, under "Actions to be</p> <p>23 Taken" --</p> <p>24 A Yes.</p> <p>25 Q -- "Reassess D&O insurance. Penalties</p> <p>149</p>	<p>1 MR. MENDEL: Probably like 15 minutes.</p> <p>2 THE WITNESS: Oh, yes, that's fine.</p> <p>3 MR. MENDEL: Does that work?</p> <p>4 MR. CADIGAN: Yes.</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. CADIGAN: By "15 minutes," you mean</p> <p>7 15 minutes left in the depo or 15 minutes until</p> <p>8 the break?</p> <p>9 MR. MENDEL: I was thinking 15 minutes</p> <p>10 until lunch, and then we can talk at lunch about</p> <p>11 how much longer I have.</p> <p>12 MR. CADIGAN: Okay.</p> <p>13 (Plaintiff's Exhibit 67 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. MENDEL:</p> <p>16 Q I'm handing you, Mr. Heinke, what's been</p> <p>17 marked as Exhibit 67.</p> <p>18 A Correct.</p> <p>19 Q This is a newly marked exhibit. It's an</p> <p>20 email chain. At the top it says from Angela</p> <p>21 Watkins to you, Peter Heinke, Tuesday, July 18th,</p> <p>22 2017. It's forwarding -- she says, "Forwarding</p> <p>23 this Insurance overview from Chris," Chris Cameron</p> <p>24 at Magnes Group.</p> <p>25 Who is Angela Watkins?</p> <p>151</p>
<p>1 are not insurable. (Jail time, etc.)"</p> <p>2 Then the second bullet, "Add defense</p> <p>3 costs. 10 million to expect to defend. (Fines</p> <p>4 are not insurable.)"</p> <p>5 Is that correct?</p> <p>6 A Correct.</p> <p>7 Q Then go to the next page, please.</p> <p>8 Actually, go to the third page.</p> <p>9 A This is 8244?</p> <p>10 Q You got it. Summary of current</p> <p>11 policies, limits -- "Summary of current policies,</p> <p>12 limits, new limits suggested." And there's a</p> <p>13 chart that seems to be cut and pasted showing</p> <p>14 coverage summary, current coverage, suggested</p> <p>15 coverage to extend, and notations, right?</p> <p>16 A Uh-hmm.</p> <p>17 Q Did Kik move from a \$15 million D&O</p> <p>18 policy to a \$25 million policy?</p> <p>19 A I believe so.</p> <p>20 MR. MENDEL: I'll take that exhibit</p> <p>21 back.</p> <p>22 How are you doing? Can we go a little</p> <p>23 while longer?</p> <p>24 THE WITNESS: How long do you think this</p> <p>25 will ...</p> <p>150</p>	<p>1 A She was our sort of office manager or</p> <p>2 head of administration.</p> <p>3 Q Who is Chris Cameron?</p> <p>4 A He is from the brokerage firm, Magnes.</p> <p>5 Q He worked with Andy Sloan?</p> <p>6 A Correct.</p> <p>7 Q I'm just going to skip down to the email</p> <p>8 that's going to Angela from Mr. Cameron. He</p> <p>9 writes in part, after the first paragraph, "In</p> <p>10 broad terms, we see the potential for a loss</p> <p>11 coming from two main areas, the investor side and</p> <p>12 the operational side." Then he says, "Investor</p> <p>13 issues will generally come from two areas," and he</p> <p>14 lists two bullets. And I'll read from the second</p> <p>15 bullet.</p> <p>16 Well, the first bullet says, to start,</p> <p>17 "Any failure of Kik to perform as the investors</p> <p>18 expect," right?</p> <p>19 A Correct.</p> <p>20 Q Then the second bullet states -- I'll</p> <p>21 just read it in full -- "With the advent of Kin,</p> <p>22 we now have the potential for regulatory issues to</p> <p>23 develop if the SEC determines that Kin is, in</p> <p>24 fact, a security and not a product. An SEC</p> <p>25 investigation would trigger defense costs, fines,</p> <p>152</p>

<p>1 and penalties, as well as a likely investor suit 2 should there be any direct impact on the value of 3 their investment." 4 Did you read this when you got it? 5 A Yes. 6 Q Was this consistent with your prior 7 concerns? 8 MR. CADIGAN: Objection. 9 Q Was this consistent with your prior 10 concerns about the securities law issue that you 11 had previously flagged for the Board? 12 MR. CADIGAN: Objection. Just, again, 13 to the extent that any prior concerns are informed 14 by discussion with counsel, I'll ask you not to -- 15 A Yes, they are. They are informed by 16 discussions with counsel. 17 Q Okay. Just the part of my question that 18 asked if this was consistent with your concerns, 19 you can't answer that without getting into 20 discussions with counsel, correct? 21 A Right. Correct. 22 MR. MENDEL: And so are you instructing 23 Mr. Heinke not to answer the question? 24 MR. CADIGAN: Yes. 25</p> <p>153</p>	<p>1 types of claims would fall under the D&O space. 2 We have a D&O policy in place already and are 3 working to replace our primary insurer because 4 they cannot accommodate anything FI related." 5 Did you understand that's what he was 6 doing? 7 A Yes, because we would have -- this would 8 have been an instruction from the Board to likely 9 look at the insurance, and we would always update 10 the Board with where the insurance was. 11 Q What does "FI related" mean? 12 A I'm not sure. I think it's financial 13 instruments, but I can't -- it's conjecture on my 14 behalf. 15 Q I'll take that one back. 16 (Plaintiff's Exhibit 68 was marked for 17 identification.) 18 BY MR. MENDEL: 19 Q I've handed you what's been marked 20 Deposition Exhibit 68, formerly Exhibit 19C in the 21 investigation. It's an email dated August 3rd, 22 2017 from Katie Tonin to the Kik Board, and there 23 are others listed on the cc line, including 24 Mr. Livingston and Nancy Wojtas. 25 Do you see that?</p> <p>155</p>
<p>1 BY MR. MENDEL: 2 Q Did you disagree with this statement? 3 A Did I disagree with the statement? 4 Q The second bullet that I read out loud, 5 did you disagree with Mr. Cameron's assessment? 6 Again, can you answer that question without -- 7 A No. It relates to the discussions I had 8 with counsel. 9 MR. MENDEL: Mr. Cadigan, do you 10 instruct the witness not to answer? 11 MR. CADIGAN: Again, to the extent that 12 it reflects discussions with counsel, I definitely 13 instruct him not to answer. 14 BY MR. MENDEL: 15 Q And you can't answer that question 16 without getting into discussions with counsel? 17 A That's right, yes. 18 Q What did you do with the information in 19 the email that you received from Chris Cameron via 20 Angela Watkins? 21 A What did I do with it? 22 Q Yes. 23 Did you forward it? 24 A I'm not sure if I forwarded it or not. 25 Q Mr. Cameron had also written, "These</p> <p>154</p>	<p>1 A Yes. 2 Q But you received this as a Kik board 3 member, right? 4 A Correct. 5 Q This is a board deck for the August 3rd 6 board meeting, correct? 7 A Correct. 8 Q If you go to page 6109, it says, 9 "Insurance Admin Update," right? 10 A Correct. 11 Q Was this your update? 12 A Yes. 13 Q It says, "D&O insurance. Kik currently 14 evaluating D&O policies. Received quotes from two 15 of the 20 applications. Limit of 25 million, 16 deductible 25,000, for cost of 55,000 per year." 17 That's right? 18 A Correct. 19 Q Is this an accurate summary? 20 A I believe so. 21 Q Is this you following up on information 22 you had received from The Magnes Group? 23 A Yes, I would assume so. 24 Q That's all I have for that one. I'll 25 take it back. Thank you.</p> <p>156</p>

<p>1 (Plaintiff's Exhibit 69 was marked for 2 identification.) 3 BY MR. MENDEL: 4 Q Mr. Heinke, I've provided you with 5 what's been marked as Deposition Exhibit 69. This 6 is an email from Chris Cameron at Magnes to you 7 directly, dated September 17th, 2017. Do you see 8 that? 9 A Yes. 10 Q He says in his email to you, "Hi, Peter. 11 Per our call Friday, here is a short summary. Be 12 prepared." And then it's forwarding another email 13 that he had sent that's dated July 18th, right? 14 And it's sent to Angela Watkins? Do you see that? 15 A Yes. 16 Q I'm handing you back Deposition Exhibit 17 67 so you can read 67 and 69 together. 18 So going back to 67, the embedded email 19 from Angela to Chris Cameron -- I'm sorry, the 20 embedded email from Chris Cameron to Angela in 21 Exhibit 67 that I read from, it's very similar to 22 the email by the same date, July 18th, in the new 23 Exhibit 69, correct? 24 A Yes. Sorry, the -- 25 Q So my question is this. There's two</p> <p>157</p>	<p>1 that you had received that's reflected in Exhibit 2 67. Again, comparing the two emails, this is a 3 little bit different than what you had heard in 4 July, right? 5 A Yes. 6 Q Now, the D&O markets have been replaced 7 by Magnes; is that right? 8 A Sorry? 9 Q The -- Mr. Magnes says, "We have 10 replaced our D&O markets," and that's -- 11 A No, it's Mr. Cameron. Magnes is the 12 company. 13 Q I apologize. 14 A That's okay. 15 Q Mr. Cameron has -- 16 A Yes. 17 Q Mr. Cameron is saying he replaced the 18 D&O markets, right? 19 A Right. 20 Q Are those like secondary insurers? 21 A I'm not sure, when you say "secondary." 22 Q When he says "replaced our D&O markets," 23 what does that mean? 24 A I think he has different insurers that 25 he goes out to, and he brokers the insurance. So</p> <p>159</p>
<p>1 embedded -- in each -- each exhibit has an 2 embedded email from Angela Watkins to Chris 3 Cameron dated July 18th, right? 4 A Correct. 5 Q And Exhibit 69, which is the separate 6 September 17th email from Chris Cameron to you, he 7 presents this as a short summary, does he not? 8 A Yes. 9 Q And the first -- the bullet that I read, 10 starting, "With the advent of Kin," that appears 11 exactly the same in both exhibits, right? 12 A Correct. 13 Q It's part of his summary to you on 14 September 17th, 2017. 15 A Correct. 16 Q The next language seems to have changed 17 a little bit. It states, "These types of claims 18 would fall under the D&O space. We have replaced 19 our D&O markets to use insurers who are 20 comfortable with the FI space and have increased 21 our total limit to 25 million to more adequately 22 guard against the increased exposure." 23 Did I read that correctly? 24 A Correct. 25 Q So this is an update since the email</p> <p>158</p>	<p>1 he's probably -- in this case he's gone out and 2 he's got other insurers that are -- it says here, 3 "who are more comfortable with the FI space." 4 So it's probably just an insurance 5 company that he's replaced. 6 Q Very well. 7 A I don't know about secondary or ... 8 Q That was my wording, right? 9 A Yes. 10 Q You just understood that he had replaced 11 the pool of insurance companies that they were 12 pursuing policies from? 13 A Correct. 14 Q I'll take 69 and the other one back from 15 you. 16 (Plaintiff's Exhibit 70 was marked for 17 identification.) 18 BY MR. MENDEL: 19 Q I'm now giving you what's been marked 20 Exhibit 70, and this was Exhibit 22C in the 21 investigation. But this is newly marked and was 22 not in your prior investigative testimony as far 23 as I know. 24 A Okay. 25 Q So this is from Brandon Brunet to Kik</p> <p>160</p>

1 Board; cc to Ted@kik.com and you, Peter Heinke,
2 October 30th, 2017.
3 Do you recognize this?
4 A Do I recognize it? No, not offhand, but
5 it's obviously something that was sent.
6 Q These are a list of approvals sought for
7 the board meeting?
8 A Okay.
9 Q Is that right?
10 A Correct.
11 Q Then let's look at the page ending in
12 242.
13 A "Budget versus actual." Oh, that's 243.
14 Okay.
15 Q This says, "Insurance Update"?
16 A Yes.
17 Q So this is in October, October 2017.
18 We're beyond the token distribution event, right?
19 A Yes.
20 Q Are you a director of the Foundation by
21 this point?
22 A Yes.
23 Q And you're still on the Kik Board,
24 right?
25 A Yes.

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1 Q This insurance update says, "Increased
2 Director's and Officer's (D&O) insurance by
3 10 million (25 million in total)."
4 So the increase had occurred?
5 A Yes.
6 Q This is just an update, right? They had
7 approved it already and it's been updated.
8 A Correct.
9 Q Then it says, "D&O covers all Kik
10 umbrella entities, including proposed directors of
11 the Kin Ecosystem Foundation."
12 What does "umbrella entities" mean?
13 A I would assume that means all the
14 subsidiary companies.
15 Q Okay. But directors of the Kin
16 Ecosystem Foundation were considered umbrella
17 entities?
18 A No, that's why I think he's put it
19 separately, "including proposed directors of the
20 Kin Ecosystem Foundation."
21 Q What's an example of what an umbrella
22 entity was?
23 A An umbrella entity would be like the
24 U.S. company, subsidiary.
25 Q Of Kik.

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1 A Yes.
2 Q Did Kik's D&O insurance coverage cover
3 the foundation directors?
4 A No. That's what we had a separate
5 insurance policy.
6 Q But it says, "D&O covers all Kik
7 umbrella entities, including proposed directors of
8 the Kin Ecosystem Foundation."
9 A I'm not sure if that's correct. I would
10 have to go back. I know there was a lot of
11 discussion even right from the start about having
12 the Foundation insured separately.
13 Q Right. It says below, "Foundation" --
14 A Right.
15 Q -- "will require separate insurance
16 policy."
17 But this suggests that the directors
18 were covered by Kik's D&O policy.
19 A Yes, that is what this is saying.
20 Q Do you have any reason to think that
21 didn't happen?
22 A I remember there was a lot of discussion
23 going on. I can't recall whether we -- this is
24 saying that we did, but I don't see -- do you have
25 any -- is there any document from Chris Cameron

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1 where he talks about the Foundation?
2 Q I don't have anything with me here.
3 A Okay. So I would have to -- I would
4 have to go back and take a look at something to
5 ensure that was the case.
6 Q Wouldn't you have been careful when you
7 wrote the update, though, to be accurate?
8 A I don't know if I wrote this or if
9 Brandon did.
10 Q In any event, the D&O insurance had been
11 raised by 10 million to 25 million, right --
12 A Correct.
13 Q -- for Kik?
14 Very well.
15 MR. MENDEL: Off the record.
16 THE VIDEOGRAPHER: We're going off the
17 record. This is the end of media unit number 2.
18 The time is 12:29 p.m.
19 (A brief recess was taken.)
20 THE VIDEOGRAPHER: We're back on the
21 record. This is the beginning of media unit
22 number 3. The time is 1:34 p.m.
23 BY MR. MENDEL:
24 Q Good afternoon, Mr. Heinke.
25 A Good afternoon.

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<p>1 (Plaintiff's Exhibit 16 was marked for 2 identification.) 3 BY MR. MENDEL: 4 Q So we're continuing. I wanted to refer 5 you to what's been marked as Deposition 16. It's 6 been placed in front of you. 7 A Yes. 8 Q This in the investigation was Exhibit 4. 9 Do you recognize Exhibit 16? 10 A Yes, I do. 11 Q This is the private placement memorandum 12 in final form? 13 A Correct. 14 Q If you could turn to page 43 and the 15 Bates stamp -- or page 3 of the PPM. It states at 16 the top, "The Development of the Kin Ecosystem" 17 and, at the bottom of the first paragraph, "The 18 development of the Kin Ecosystem will follow four 19 key milestone phases." 20 Do you see that? 21 A Yes. 22 Q That was true? 23 A Yes. 24 Q Also on page 3, at the bottom, "Initial 25 Launch of Kin and Kin Ecosystem," there is a</p> <p style="text-align: center;">165</p>	<p>1 investigation as 5, correct? 2 A Yes. 3 Q Is this the form of the SAFT used for 4 accredited investors? 5 A Yes. 6 Q This is the final one, correct? 7 A I believe so, yes. 8 Q The first page states, under "Notice to 9 Residents of the United States," "The offer and 10 sale of this security instrument has not been 11 registered under the U.S. Securities Act of 1933 12 as amended," right? 13 A Correct. 14 Q So it referred to the SAFT. Simple -- 15 what we're looking at is the Simple Agreement for 16 Future Tokens? 17 A Yes. 18 Q And the short form for that is SAFT, 19 S-A-F-T. 20 A Correct. 21 Q And the first page identified it as a 22 security instrument, in what I just read, the 23 first page. 24 A Not -- oh, yes, as a security 25 instrument. It has not been registered, though,</p> <p style="text-align: center;">167</p>
<p>1 section about minimum viable product. Do you see 2 that? 3 A Yes. 4 Q Okay. 5 You thought it was important for the 6 participants, via SAFTs, to have information about 7 the MVP, correct? 8 A Correct -- well, yes, I would say 9 correct. 10 Q You thought that was important, right? 11 A Yes. 12 Q Because it described what people would 13 be able to do with Kin when they first bought it, 14 right? 15 A Yes. 16 Q The MVP was not described in the white 17 paper, though, correct? 18 A That's correct. 19 Q I'll take that one back. 20 Here's number 52. 21 (Plaintiff's Exhibit 52 was marked for 22 identification.) 23 BY MR. MENDEL: 24 Q I've given you what's been marked as 25 Deposition Exhibit 52, previously marked in the</p> <p style="text-align: center;">166</p>	<p>1 yes, that's correct. 2 Q Are you aware of any terms of the SAFT 3 changing from investor to investor? 4 A No. 5 Q Can you turn to "Definitions" on page 2. 6 I'm looking at the sections called "Discount 7 Price" and "Discount Rate." "Discount price means 8 the maximum price per token sold by the company to 9 the public during the network launch, multiplied 10 by the discount rate." 11 A Correct. 12 Q Can you explain what all this means? 13 MR. CADIGAN: Objection. 14 Q Sure. Let me be more specific. What 15 was the network launch, as referred to in the 16 SAFT? 17 A (Document review.) 18 That would be the TDE, I believe. 19 Q The token distribution event? 20 A Yes. 21 Q Okay. And when the discount price is 22 defined as "the maximum price per token sold by 23 the company to public during the network launch, 24 multiplied by the discount rate" -- 25 A Right.</p> <p style="text-align: center;">168</p>

<p>1 Q -- was that a linkage between the price 2 paid by the SAFT participant with the price of the 3 token in the token distribution event? 4 MR. CADIGAN: Objection. 5 A Sorry, can you -- can you just go 6 through that again? 7 Q Sure. 8 Was the discount price paid, was that 9 the price paid by a SAFT participant? 10 A Yes. 11 Q Can you describe the linkage between the 12 discount price and the price paid in the token 13 distribution event? 14 MR. CADIGAN: Objection. 15 A What do you mean by "linkage"? 16 Q Well -- it means, it states here that 17 "the maximum price per token sold by the company 18 to the public during the network launch, 19 multiplied by the discount rate." 20 A Right. 21 Q And the discount rate is defined in the 22 SAFT, right? 23 A Okay. 24 Q At 70 percent? 25 A That's what you're defining as linkage,</p> <p>169</p>	<p>1 Exhibit 40. And that's Deposition Exhibit 40, 2 Investigation Exhibit 133. 3 This is a list of the participants via 4 SAFT, correct? 5 A Correct. 6 Q And as reflected on -- it's a one-page 7 list, and it lists "Participant Name," "Amount," 8 and "Date of SAFT" on the right. Do you see that? 9 A Yes. 10 Q And, as reflected on the column on the 11 right, "Date of SAFT," there are a number of SAFTs 12 that were executed on September 11th, 2017; is 13 that right? 14 A Correct. 15 Q And you have -- sitting here today, you 16 have an independent memory that this occurred, 17 right, that certain SAFT participants signed their 18 paperwork on September 11th, 2017, right? 19 A Yes. 20 Q On the Exhibit 133, further, you see 21 about two thirds of the way down, "Maple Ventures, 22 LLC." Do you see that? 23 A Yes. 24 Q They bought for \$4,500,000? 25 A Correct.</p> <p>171</p>
<p>1 okay. 2 Q And so, was the price paid by the SAFT 3 participant discounted from the token distribution 4 event price? 5 A Yes. 6 Q And, according to this final SAFT, it 7 was discounted 70 percent. 8 A That's correct. 9 Q So by the terms of the SAFT, did the 10 price paid by the SAFT participant depend on the 11 price paid in the token distribution event? 12 A Yes. 13 MR. CADIGAN: Objection. 14 Q You can answer that. Yes? 15 A Yes. 16 Q If the price in the token distribution 17 event changed, so too did the price paid by the 18 SAFT participant for one token, correct? 19 MR. CADIGAN: Objection. 20 Q You can answer. 21 A Yes. 22 (Plaintiff's Exhibit 40 was marked for 23 identification.) 24 BY MR. MENDEL: 25 Q I've given you what's been marked</p> <p>170</p>	<p>1 Q And you met them in New York on or 2 around May 25th during the announcement of Kin, 3 correct? 4 A Correct. 5 Q And you see Pantera Capital Management 6 is listed for \$15 million? 7 A Correct. 8 Q You also met them in New York that same 9 time, correct? 10 A Yes. 11 Q Great. 12 I'll take that one back, please. 13 During the summer of 2017, it was 14 decided within Kik to approach the Ontario 15 Securities Commission about Kik's plans to issue 16 Kin, correct? 17 A Correct. 18 Q And Ontario Securities Commission, the 19 acronym for that is OSC? 20 A Correct. 21 Q You have heard that at least particular 22 people at the OSC were upset; isn't that right? 23 A I'm not sure what the -- 24 MR. CADIGAN: Objection. I just caution 25 you, to the extent that any of the bases is based</p> <p>172</p>

<p>1 upon communications, conversations with counsel, I 2 instruct you not to answer. 3 THE WITNESS: Okay. 4 MR. CADIGAN: But to the extent it 5 wasn't, go for it. 6 A No, that's -- I don't know if I would 7 use the term "upset," but they wanted to -- they 8 heard about our -- what we were doing with Kin, 9 and they wanted to know -- they didn't have any 10 knowledge about it. 11 Q Well, let's take a look at your 12 transcript. Can you go to page 431 of your 13 transcript. 14 A (Document review.) 15 Q Look at line 1618. 16 I'll read -- this is your answer to a 17 prior question. "So on that basis we said sure, 18 and we set up a meeting with them, and someone 19 said they were a little upset." 20 Does that refresh your memory? 21 A I guess so. I didn't recall using that 22 term, but that's fine, I guess, here. 23 Yes, we didn't understand why they were 24 upset, that's correct. 25 Q But you believed it came down to the</p> <p style="text-align: center;">173</p>	<p>1 Q Okay. But this was the issue, wasn't 2 it, whether Kin was a security or not? 3 A Yes. 4 Q You had the meeting, right? 5 A Correct. 6 Q You attended? 7 A Yes, I did. 8 Q Mr. Livingston and Mr. Philp attended? 9 A Correct. 10 Q Kik's counsel, Ross McKee, attended? 11 A Correct. 12 Q Kik's counsel from Cooley, Nancy Wojtas, 13 attended by phone? 14 A Correct. 15 Q Anybody else? 16 A I'm not sure whether Eileen was with us 17 at that point in time yet or not, so I can't 18 recall if she was on the call or not. 19 Q Mr. Ross McKee, he's from a law firm 20 known as Blakes? 21 A That's correct. 22 Q During the meeting, Mr. McKee discussed 23 whether Howey would apply to Kik's issuance of 24 Kin; isn't that right? 25 A That's correct.</p> <p style="text-align: center;">175</p>
<p>1 view of whether Kin was a security or not, 2 right -- 3 A No. 4 Q -- in terms of what their -- what the 5 reason for the discord could be? 6 A I think it was that they -- whether it 7 was a security or not, but they knew we were -- 8 they had heard about it through other people, and 9 they wanted to -- they didn't know anything about 10 it. 11 So I think at the time William Mougayar 12 was informing us about that, and I think I 13 mentioned that, yes, he was our advisor. 14 So he had heard the OSC, I would say, 15 someone was questioning like what were we doing 16 because we were getting questions about our 17 offering. 18 Q Can you read to yourself your answer on 19 lines 19 to 22. 20 A "And someone said they were a little 21 upset, and we said we don't understand why they 22 were upset. And, again, it came down to the view 23 whether this was a security or not. And we felt 24 it wasn't, and so we went in there to have a 25 discussion with them."</p> <p style="text-align: center;">174</p>	<p>1 (Plaintiff's Exhibit 58 was marked for 2 identification.) 3 BY MR. MENDEL: 4 Q I'm showing you what's been marked as 5 Exhibit 58. 6 A Correct. 7 Q This is a letter from -- on Blakes 8 letterhead dated November 2nd, 2017, again, 9 Deposition Exhibit 58. This was Deposition -- I'm 10 sorry, this was Exhibit 186 in the investigation. 11 Do you recognize this? 12 A Yes. 13 Q I'm reading in the middle of the first 14 page. "The meeting on August 14th was in fact 15 inconclusive. Notes indicate that the closest the 16 OSC staff present came to expressing a position 17 was for Pat Chaukos to say, 'I'm not sure we're 18 where you are.'" 19 This is Mr. McKee writing in the letter, 20 correct? 21 A Yes. 22 Q And so the meeting took place on 23 August 14th? 24 A That's correct. 25 Q You'll recall a board meeting that we</p> <p style="text-align: center;">176</p>

<p>1 looked at this morning on or about August 3rd, 2 right, when you -- in which you had discussed 3 raising D&O coverage; is that right? 4 A Correct. 5 Q So this is 11 days after that meeting 6 about raising D&O coverage? 7 A Correct. 8 Q Then two paragraphs down in this letter 9 on Exhibit 58, "In fact, the first time that the 10 OSC staff definitively communicated a position 11 that the ITD constituted an offering of securities 12 was in the telephone call to me from Ms. Chaukos 13 on September 5, shortly before the scheduled 14 launch date." 15 Did I read that correctly? 16 A That's correct. 17 Q By "ITD," McKee is referring to the 18 token distribution event? 19 A Correct. 20 Q Within a few days of September 5th, did 21 Kik make a decision about selling Kin tokens to 22 people in Canada? 23 A I'm not sure exactly the date of when we 24 decided not to sell Kik tokens in Canada. I know 25 that during the meeting it became clear that the</p> <p>177</p>	<p>1 the OSC could find that the token distribution 2 event constituted an offering of securities? 3 A I think that's speculative. I mean, we 4 didn't know what framework they were using. So 5 until they came up with a framework, we were -- it 6 was a guess as to what they were going to -- how 7 they were going to evaluate it. 8 Q I guess, my question was what -- you 9 were concerned that they could find that it was an 10 offering. 11 A They could, yes. 12 Q And that factored into your decision, 13 correct? 14 A It was part of it because they had also 15 told us about the Quebec Securities Commission. 16 So -- I think I spoke about it in my testimony, 17 but in Canada each provincial securities 18 commission is regulated independently, and they 19 have this overriding Canadian Securities 20 Association, and each province takes a turn at 21 running that overall, and Quebec was running it at 22 the time so someone said we should also talk to 23 Quebec. 24 We had a discussion with him, and in 25 that discussion we raised the fact that from</p> <p>179</p>
<p>1 OSC hadn't had a position and they hadn't had 2 decided on what sort of framework they would use 3 to value whether something -- evaluate whether 4 something was a security or not. 5 Specifically, when Ross raised the issue 6 of the Howey test, Ms. Chaukos' response was that 7 she looked at it as an old framework or something 8 to that extent. 9 Q You remember that, sitting here today? 10 A Yes, I do, because that was the basis of 11 that we didn't -- they didn't know on what basis, 12 how they were going to review it or against what 13 test. And I think -- my understanding is, I 14 believe, since then they haven't even -- they're 15 not using the Howey test, but I can't recall that. 16 Q So then why did you decide not to 17 proceed with the sale in Canada? 18 A Because we didn't know on what basis 19 they were reviewing it, how they were establishing 20 whether it was a security or not. 21 Q Was it in an abundance of caution? 22 A Pardon? 23 Q Were you being cautious? 24 A Yes. 25 Q You were concerned, were you not, that</p> <p>178</p>	<p>1 discussion with our tax and audit advisors, that 2 they would view this as a sale of a product and 3 that it would be taxable. So he said those were 4 pretty good arguments for it not being a security. 5 And then he asked me to send him the letter, which 6 I did, and then I didn't hear anything back from 7 him. 8 Q When you say "he," who are you talking 9 about? 10 A The fellow at the -- I forget what his 11 name is, but the Quebec -- I think there's 12 somewhere in the documents, there's whoever was 13 head of the -- I don't think it was head, but head 14 of regulatory or something. There were two people 15 on the phone. There was a gentleman and a lady at 16 the Quebec Securities Commission. 17 Q When was this phone call? 18 A It was probably around the time just 19 shortly after our initial meeting with the OSC. 20 Q Who was on that call? 21 A It was Ted, I think myself, Tanner, and 22 the two people from the Commission. 23 Q So is it fair to say that Kik was 24 concerned that either the OSC or the Quebec 25 Securities Commission could find that an offering</p> <p>180</p>

1 of Kin was an offering of securities?
 2 **A** Yes. That would be speculative, but,
 3 yes, I would agree.
 4 **Q** Well, you didn't know what they were
 5 going to decide.
 6 **A** No.
 7 **Q** That was your testimony, right?
 8 **A** Yes.
 9 **Q** But Kik was concerned about what they
 10 could decide.
 11 **A** Right. We didn't want -- we wanted to
 12 comply, and so we didn't want to do something that
 13 would breach that, and they hadn't made a decision
 14 about what framework they were using to evaluate
 15 it.
 16 **Q** And on that basis you decided not to
 17 offer the Kins in Canada, correct?
 18 **A** Correct.
 19 **Q** I'll take back 58.
 20 **A** 58 and -- do you want both of these?
 21 You have 52 there also.
 22 **Q** That's fine.
 23 (Plaintiff's Exhibit 59 was marked for
 24 identification.)
 25

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1 BY MR. MENDEL:
 2 **Q** I'm showing you what's been marked
 3 Deposition Exhibit 59, which was in the
 4 Investigation Exhibit 187. It says at the top,
 5 "Canadian Residents Excluded from Next Week's Kin
 6 TDE." It's dated September 7, 2017.
 7 Do you recognize this?
 8 **A** Yes.
 9 **Q** This was a Medium post by
 10 Mr. Livingston, correct?
 11 **A** Correct.
 12 **Q** Announcing that Kin wouldn't be sold to
 13 Canadians?
 14 **A** Correct.
 15 **Q** This was the announcement on
 16 September 7th?
 17 **A** Correct.
 18 **Q** This is two days after the Blakes
 19 letter?
 20 **A** Yes. Sorry. What was the date of the
 21 Blakes letter?
 22 **Q** It's referred to in Exhibit -- let me
 23 just hand you back 58 briefly. In the paragraph
 24 it discussed a letter from Ms. Chaukos on the 5th.
 25 **A** Okay.

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1 **Q** Do I have that right?
 2 **A** Yes.
 3 **Q** So, I said -- so in the November 2nd
 4 Blakes letter, where it refers to --
 5 **A** Sorry, it says -- it wasn't a letter
 6 from Chaukos. It was a telephone phone call with
 7 Chaukos.
 8 **Q** Thank you for clarifying.
 9 **A** Okay.
 10 **Q** I spoke incorrectly.
 11 **A** Yes.
 12 **Q** So just to make the record clear, the
 13 Blakes letter in Exhibit 58 states that "In a
 14 telephone call from Ms. Chaukos on September 5th,
 15 the OSC staff definitively communicated a position
 16 that the ITD constituted an offering of
 17 securities," right?
 18 **A** Right.
 19 **Q** Okay. So two days after that phone call
 20 on September 5th, on September 7th the
 21 announcement came out from Mr. Livingston that
 22 Canadians were excluded, correct?
 23 **A** Correct.
 24 **Q** Thank you.
 25 In late August, Kik announced the

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1 schedule for its token distribution event?
 2 **A** I believe so.
 3 **Q** Is it your recollection Kik issued a
 4 press release on August 29th, 2017, announcing
 5 that the event would start September 12th?
 6 **A** I don't recall the press release, but do
 7 you have it there?
 8 (Plaintiff's Exhibit 55 was marked for
 9 identification.)
 10 BY MR. MENDEL:
 11 **Q** I'm handing you what's been marked
 12 Deposition Exhibit 55.
 13 **A** Yes, that's August 29th.
 14 **Q** And this was Exhibit 93 in the
 15 investigation, so, yes, this -- this is the
 16 August 29th press release issued by Kik, right?
 17 **A** Yes.
 18 **Q** It announced that the event would start
 19 September 12th?
 20 **A** Yes.
 21 **Q** It says, "Kik also announced that" -- in
 22 the first paragraph -- "it has successfully closed
 23 a presale round of U.S. 50 million to select
 24 accredited investors, including Blockchain
 25 Capital, Pantera Capital, and Polychain Capital,

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<p>1 right?</p> <p>2 A Yes.</p> <p>3 Q But as we discussed previously, certain</p> <p>4 SAFTs were entered into after this date, on</p> <p>5 September 11th, right?</p> <p>6 A Right.</p> <p>7 Q And then at the bottom it says, "To</p> <p>8 learn more about Kin and to register for the TDE,</p> <p>9 please visit kin.kik.com. All who want to</p> <p>10 participate in the TDE must register by</p> <p>11 September 9th." Right?</p> <p>12 A Correct.</p> <p>13 Q I'll take that back. Actually, just</p> <p>14 keep it for the moment.</p> <p>15 (Plaintiff's Exhibit 60 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. MENDEL:</p> <p>18 Q I'm providing you what's been marked</p> <p>19 Deposition Exhibit 60. This was Exhibit 93 in the</p> <p>20 investigation. And this is the September 12th</p> <p>21 press release by Kik that the token distribution</p> <p>22 event was commencing, correct?</p> <p>23 A Correct.</p> <p>24 Q And it gives information about the</p> <p>25 results of what it called the presale, right?</p> <p style="text-align: center;">185</p>	<p>1 Q The Foundation was formed on</p> <p>2 September 12th, 2017, right?</p> <p>3 A Correct.</p> <p>4 Q The Foundation had no operations between</p> <p>5 the date of its formation on September 12th, 2017,</p> <p>6 and the token distribution event, right?</p> <p>7 A Right.</p> <p>8 Q Directors were announced -- when the</p> <p>9 Foundation was formed, the directors were you and</p> <p>10 Mr. Livingston, right?</p> <p>11 A Correct.</p> <p>12 Q When formed, the Foundation was not</p> <p>13 independent of Kik, right?</p> <p>14 A I'm not sure how -- I'm not sure what</p> <p>15 the structure was of the foundation offhand</p> <p>16 because it's a trustee organization so it doesn't</p> <p>17 have a share structure, per se.</p> <p>18 Q Right.</p> <p>19 Can you look at your transcript, please,</p> <p>20 on page 455.</p> <p>21 A Yes. (Document review.)</p> <p>22 Okay.</p> <p>23 Q The question at -- well, the sequence</p> <p>24 starts on the bottom of page 455, line 21.</p> <p>25 A Okay.</p> <p style="text-align: center;">187</p>
<p>1 A Correct.</p> <p>2 (Plaintiff's Exhibit 61 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. MENDEL:</p> <p>5 Q I handed you what's been marked</p> <p>6 Deposition Exhibit 61, right, that was Exhibit 95</p> <p>7 in the investigation?</p> <p>8 A Yes.</p> <p>9 Q And this was the announcement that the</p> <p>10 token distribution event had successfully ended,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q And it states in the first sentence that</p> <p>14 "The token distribution event has successfully</p> <p>15 ended, raising nearly U.S. 100 million," correct?</p> <p>16 A Correct.</p> <p>17 Q I'll take all three of those back.</p> <p>18 (Plaintiff's Exhibit 62 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. MENDEL:</p> <p>21 Q I've given you Deposition Exhibit 62,</p> <p>22 which was Exhibit 188 in the investigation.</p> <p>23 Do you recognize this as the Certificate</p> <p>24 of Incorporation for the Kin Ecosystem Foundation?</p> <p>25 A Yes.</p> <p style="text-align: center;">186</p>	<p>1 Q "Okay." And this is a question. "Okay.</p> <p>2 So, at the time, at the token distribution event,</p> <p>3 had people decided, well, let me -- sorry, when it</p> <p>4 was formed, who were the directors?"</p> <p>5 Answer, "Directors at that time would</p> <p>6 have been Ted Livingston and myself."</p> <p>7 Question --</p> <p>8 A Right.</p> <p>9 Q Question, "So at the time it was formed,</p> <p>10 was this entity independent of Kik?"</p> <p>11 Answer, "No."</p> <p>12 A Well, it depends on how you define</p> <p>13 independence because it was set up as a trust to</p> <p>14 hold the shares so it's not, like, owned by Kik.</p> <p>15 You would -- you could -- so whether it was</p> <p>16 independent or not, it's -- I mean, it's a</p> <p>17 difficult question because the structure of this,</p> <p>18 from what I understand, is a trust.</p> <p>19 Q Well, if you're just looking at the</p> <p>20 identity of the directors, was it independent?</p> <p>21 A Based on that, no.</p> <p>22 Q Because you and Mr. Livingston were both</p> <p>23 directors of --</p> <p>24 A Yes.</p> <p>25 Q -- of Kik Interactive, right?</p> <p style="text-align: center;">188</p>

1 A Yes.
2 Q Okay.
3 A However, that was not the intent at the
4 time because both William Mougayar and Bill
5 Raduchel were as designee directors.
6 Q But as designee directors, they didn't
7 have a vote, correct?
8 A No.
9 Q At the time of the token distribution
10 event, had the Foundation done anything?
11 A No.
12 Q Had it taken any actions?
13 A Not that I believe.
14 Q Not that you can remember, right?
15 A No.
16 Q From the time of the token distribution
17 event in September of 2017 to the end of that year
18 2017, the Kin Foundation was not independent of
19 Kik, as identified by their directors, correct?
20 A Correct.
21 Q And by the end of 2017, the Kin
22 Ecosystem Foundation was not operating, right?
23 A It wasn't operating, but we did have
24 meetings as though it was operating. So we had, I
25 believe, two meetings with William Mougayar and

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1 Bill Raduchel, with whom we discussed actions of
2 the Foundation, like, i.e., we engaged McKenzie at
3 the time, and there was one other discussion, but
4 I can't remember what it was offhand.
5 Q These were meetings with you -- how do
6 you say his name, Mougayar?
7 A Mougayar.
8 Q Mougayar.
9 A Yes.
10 Bill Raduchel and Ted and myself. And I
11 can't recall whether anybody else was on the call.
12 Q There were two meetings?
13 A Yes.
14 Q Was McKenzie retained?
15 A Yes.
16 Q When?
17 A I can't recall. Like, it was in the
18 fall, but I can't recall when.
19 Q Did Kik pay for McKinsey's retention?
20 A I can't recall the distribution of funds
21 at the time.
22 Q Did the Foundation have any assets to
23 pay other than the Kin that it owned?
24 A We had loaned over \$100,000 to the
25 Foundation. I recall that.

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1 Q Who is "we"?
2 A Kik did.
3 Q Kik had loaned the Foundation \$100,000.
4 A Correct.
5 Q Did the Foundation have any other cash?
6 A No.
7 Q You served on the Foundation Board until
8 May 2018?
9 A Correct.
10 Q During the time you served on the
11 Foundation Board, the Foundation had no other
12 directors who could vote and no employees; is that
13 right?
14 A That's correct.
15 Q During the time you served on the Board
16 of the Foundation, the Foundation had no
17 operations other than meetings between yourself
18 and the other -- and Mr. Livingston and
19 Mr. Mougayar and Mr. Raduchel, correct?
20 A Correct.
21 Q And the Foundation did receive Kin
22 during the token distribution event, right?
23 A Yes, I believe so.
24 Q Your testimony is the Foundation
25 obtained separate D&O insurance?

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1 A Correct.
2 Q It was Kik that funded the Foundation's
3 directors and officers insurance, isn't it?
4 A Correct.
5 Q And they funded it through the \$100,000
6 that was put into the foundation bank account.
7 A Yes.
8 Q That money was only spent on insurance.
9 It wasn't spent on anything else, right?
10 A I don't recall if there was anything
11 else.
12 (Plaintiff's Exhibit 71 was marked for
13 identification.)
14 BY MR. MENDEL:
15 Q I've handed you what's been marked
16 Deposition Exhibit 71. I don't believe you were
17 shown this in your investigative testimony.
18 A No.
19 Q It's an email chain from December 2017.
20 At the bottom of the chain, it's an email from
21 Chris Cameron from The Magnes Group to William
22 Raduchel and Mr. Mougayar and a cc to you,
23 Mr. Heinke. It says, "Hi, everyone. Thanks very
24 much for your patience. Attached is the summary
25 for the D&O quotes we've obtained to build a

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1 \$20 million tower." And it provides some other
2 details.
3 Do you know what Mr. Cameron is saying
4 about the \$20 million tower?
5 A I'm not sure what he means by "tower,"
6 but it's a \$20 million coverage is what I assume
7 it means.
8 Q Is that what the Foundation got?
9 A I can't recall. I believe so, based on
10 what's said here.
11 Q What was your role in arranging the
12 coverage?
13 A Basically just to direct Chris Cameron
14 to look at foundation insurance, and then it says
15 here, "Report to Bill and William."
16 Q Had they requested \$20 million coverage?
17 A I can't recall what the request was or
18 whether that was what seemed -- what his
19 assessment was what would be necessary.
20 It says here -- if you look here, it
21 says, "Can you please confirm that you're okay to
22 proceed and bind the coverage. This reflects the
23 increase that you requested to 20 million."
24 Q Yes.
25 A So it would be requested by them, based

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1 on the email string.
2 Q Did you essentially act as a go-between
3 to arrange the coverage?
4 A I made the contact with Chris Cameron
5 because he was our -- he was Kik's insurance
6 agent.
7 Q Was the insurance that the Foundation
8 obtained through the same agent, Magnes?
9 A Yes.
10 Q I'll take that back.
11 A Do you want this, too?
12 Q Yes. Thank you.
13 You mentioned Mr. Mougayar's role with
14 the Foundation.
15 Kik had already hired Mr. Mougayar as a
16 consultant to help with the Kin project, right?
17 A That's correct.
18 Q He was paid \$5,000 a month?
19 A Correct.
20 Q That was from the March time period of
21 2017?
22 A Correct.
23 Q And while you were a director of the
24 foundation, Mr. Mougayar --
25 A Mougayar.

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1 Q Mougayar, thank you.
2 He did not also hold the title of
3 director, correct?
4 A No.
5 Q And he didn't vote?
6 A No.
7 Q The other person you said you consulted
8 with was Bill Raduchel?
9 A Correct.
10 Q While you were a director of the
11 Foundation, the Foundation didn't pay
12 Mr. Raduchel, did it?
13 A No.
14 Q Did Kik pay Mr. Raduchel?
15 A I don't believe so, no.
16 Q He didn't hold the title of director
17 while you held it, correct?
18 A No.
19 Q Did he ever hold the title of director?
20 A No, he was just a designee.
21 Q He never became a director at all.
22 A No.
23 (Plaintiff's Exhibit 25 was marked for
24 identification.)
25

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1 BY MR. MENDEL:
2 Q I have handed you what's been marked
3 Deposition Exhibit 25.
4 A Yes.
5 Q This was Investigatory Exhibit 167.
6 A Correct.
7 Q Let me ask you, before we get to the
8 details of that, do you have any current position
9 with Kik?
10 A No, other than as a shareholder.
11 Q Okay.
12 Have you sold any shares of Kik since
13 the 1 million that you mentioned?
14 A No.
15 Q Did that position increase?
16 A No. I did -- we did, back when -- I
17 don't know what year it was. We all gave
18 5 percent of our equity holdings to other
19 employees through another -- through a company,
20 but I can't recall the structure of how it was set
21 up.
22 Q What year was that?
23 A Probably around 2014 or '15. It was
24 when we did the B round.
25 Q Okay.

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<p>1 You stopped being an employee of Kik on 2 June 30th, 2018; is that right? 3 A Correct. 4 Q And then you worked for Kik as a 5 consultant. 6 A Correct. 7 Q And what I have given you as Exhibit 25, 8 this is your consulting agreement? 9 A Correct. 10 Q Looking at the first page, ending in 11 219, it says this was entered into on the first 12 day of July 2018. 13 A Correct. 14 Q Is that when it was entered into? 15 A Yes. 16 Q If you go to page 3, ending in numbers 17 221 on the lower right corner -- 18 A Correct. 19 Q -- those are the signatures of 20 Mr. Livingston for Kik and then signed by you 21 below, right? 22 A Correct. 23 Q Going back to the first page, under 24 "Term," it states in the middle of the paragraph 25 there, "This agreement shall have a term of 12</p> <p style="text-align: center;">197</p>	<p>1 looking at the "Fees" section, it states, 2 "Consultant shall receive 51,600 Canadian dollars 3 a month for 12 months, payable in advance in two 4 equal installments." 5 Did you receive those two installments? 6 A Yes, I did. 7 Q Those were on July 1st, 2019, and 8 January -- I'm sorry, those were on July 1st, 9 2018, correct? 10 A Yes. 11 Q And January 1st, 2019. 12 A That's correct. 13 Q So the second installment came after 14 your investigative testimony in September of 2018, 15 right? 16 A Correct. 17 Q It says, directly above "Fees," 18 "Consultant will be required to provide 19 approximately 15 hours of advisory services per 20 month"? 21 A Correct. 22 Q So this -- if you average out 51,600 23 Canadian dollars over 15 hours, that's about 3,440 24 Canadian dollars per hour; is that right? 25 A Correct.</p> <p style="text-align: center;">199</p>
<p>1 months after which this agreement may be renewed 2 on a month-to-month basis by further agreement of 3 the parties hereto," correct? 4 A Yes. 5 Q Was this agreement renewed? 6 A No. 7 Q Did you enter into a new agreement with 8 Kik after that? 9 A How do you define agreement? 10 Q Did you enter into any kind of 11 consultant agreement with Kik? 12 A No. 13 Q Was -- looking at page 2, there's a 14 termination clause 6. Was the agreement 15 terminated under this clause? 16 A No. 17 Q So the agreement went to completion, 18 right, 12 months? 19 A Correct. 20 Q Let's go to Schedule A, which has the 21 numbers 222 on the lower right corner. Do you see 22 that? 23 A Yes. 24 Q So, this Schedule A includes a statement 25 of work, and it includes a section on fees. And</p> <p style="text-align: center;">198</p>	<p>1 Q Did you exceed this 15-hour requirement 2 in any month of your consultancy? 3 A No. Well, I would say that I was -- 4 down here, there would have been, like, two 5 days -- two full days just in that. So there 6 would have been work, but I say over the course of 7 the year, when you average out the 15,000, it 8 didn't exceed -- or 15 hours. 9 Q When you're talking about "down here," 10 you mean for your investigative testimony. 11 A Exactly. 12 Q Okay. 13 So Kik never paid you -- during the term 14 of your agreement, Kik never paid you extra in 15 addition to what you were ob- -- due under this 16 agreement, correct? 17 A No, they didn't. 18 Q In your view, was the time you spent 19 as -- testifying with the SEC, was that pursuant 20 to this agreement? 21 A Yes, because it says, "Continued support 22 with respect to regulatory issues such as the 23 SEC." 24 Q Okay. So the testimony fell into that 25 bucket, bucket number 1 under --</p> <p style="text-align: center;">200</p>

<p>1 A I mean, I would --</p> <p>2 Q -- Schedule A?</p> <p>3 A Yes, I would assume -- yes. It wasn't a</p> <p>4 direct correlation.</p> <p>5 Q But you counted it?</p> <p>6 A I didn't really count it. I just had --</p> <p>7 I didn't keep a set time record if that's what</p> <p>8 you're asking.</p> <p>9 Q No, I mean, I'm not asking that. I'm</p> <p>10 just asking if you considered your testimony</p> <p>11 before the SEC in September to be doing work under</p> <p>12 your consulting agreement, specifically statement</p> <p>13 of work 1.</p> <p>14 A I didn't -- I wouldn't say I considered</p> <p>15 it beforehand, before you just raising it right</p> <p>16 now. I mean, it was something I did, but it was</p> <p>17 sort of -- I just looked at it as a bucket here of</p> <p>18 a number of different things.</p> <p>19 Q So you just did it.</p> <p>20 A Yes.</p> <p>21 Q Did you think it was under your</p> <p>22 consulting agreement?</p> <p>23 A I guess you could say that, but I don't</p> <p>24 know -- I'm not sure about the exact testimony.</p> <p>25 It was just ongoing support, it says there.</p> <p>201</p>	<p>1 A No, I didn't.</p> <p>2 Q Have you paid any legal bills related to</p> <p>3 the SEC's investigation or this lawsuit?</p> <p>4 A No, he haven't.</p> <p>5 Q Do you have an understanding who's</p> <p>6 covering the bills for your attorneys sitting</p> <p>7 here?</p> <p>8 A Can I just take a step back?</p> <p>9 Q Yes.</p> <p>10 A I had one -- I had a call with, just</p> <p>11 recent- -- well, before this happened, I did have</p> <p>12 one call with a Canadian counsel who I just went</p> <p>13 through, and then that was it. And I don't think</p> <p>14 he's even billed me for the time.</p> <p>15 Q When you say "this," are you talking</p> <p>16 about this deposition?</p> <p>17 A Yes.</p> <p>18 Q So you called a Canadian counsel, not</p> <p>19 Cooley --</p> <p>20 A Yes.</p> <p>21 Q -- about this.</p> <p>22 A Yes.</p> <p>23 Q And you may get a bill for that.</p> <p>24 A Right.</p> <p>25 Q Do you know who's going to pay for that?</p> <p>203</p>
<p>1 Q Did you perform any other tasks under</p> <p>2 this item, number 1?</p> <p>3 A I can't recall. It's over a year ago.</p> <p>4 Q You could have, you just don't know?</p> <p>5 A I just don't know.</p> <p>6 Q Would you say -- well, for your</p> <p>7 investigative testimony, did you prepare for it?</p> <p>8 A Yes.</p> <p>9 Q Where did you prepare?</p> <p>10 A I prepared in Palo Alto.</p> <p>11 Q How many days did you prepare?</p> <p>12 A I think it was one to two days.</p> <p>13 Q Was that preparation with Cooley's</p> <p>14 lawyers?</p> <p>15 A Yes. Sorry, and then another day here</p> <p>16 just prior to.</p> <p>17 Q Did you receive compensation, apart from</p> <p>18 your consulting agreement, for your preparation</p> <p>19 for those sessions?</p> <p>20 MR. CADIGAN: Objection. Go ahead.</p> <p>21 A I was paid the expenses for flights, or</p> <p>22 they paid them directly.</p> <p>23 Q Did you receive any other payments for</p> <p>24 your time spent preparing for your investigative</p> <p>25 testimony in 2018?</p> <p>202</p>	<p>1 MR. CADIGAN: Objection.</p> <p>2 A I haven't presented it yet, but ...</p> <p>3 Q Presented it to Kik, you mean?</p> <p>4 A Yes, because I haven't gotten a bill.</p> <p>5 Q Do you plan to?</p> <p>6 MR. CADIGAN: Objection. You're talking</p> <p>7 about something he hasn't received.</p> <p>8 A I haven't received it yet so I'll take a</p> <p>9 look what it is. He might not even charge me</p> <p>10 so --</p> <p>11 Q Okay. So you'll address that. You may</p> <p>12 submit it to Kik after you receive it.</p> <p>13 A May or may not. I'm not sure.</p> <p>14 MR. CADIGAN: Objection.</p> <p>15 Q I'm just saying what your future plans</p> <p>16 are. I think you can say what your future plans</p> <p>17 are.</p> <p>18 MR. CADIGAN: Speculation. Objection.</p> <p>19 Go ahead, answer.</p> <p>20 A I may or may not. I'm not sure what I</p> <p>21 will do yet.</p> <p>22 Q Has anybody at all made any payments to</p> <p>23 you for appearing for this deposition today?</p> <p>24 A No. Just taking, considering, like,</p> <p>25 the -- I paid for the hotel this morning, and the</p> <p>204</p>

<p>1 flights were booked through Kik. 2 Q Has anybody made any payments to you for 3 appearing -- for preparing for this deposition? 4 A No. 5 Q Do you have any kind of understanding, 6 like, broadly speaking, for payments that might 7 come to you for appearing in this deposition 8 today? 9 A No. 10 Q Do you have any understanding of 11 payments that may come to you for preparing for 12 the deposition today? 13 A Only for the expenses, flights and 14 hotel. 15 Q Flights and hotel. 16 You don't have an understanding that 17 you'll be paid for your time today or for 18 preparing? 19 A No. 20 Q Did you ever have emails with anybody 21 about the possibility of being paid for your time? 22 A No. 23 Q Are you doing any work at all for Kik 24 right now? 25 A No.</p> <p style="text-align: center;">205</p>	<p>1 have a technology for converting WiFi in your home 2 to motion detection. 3 And that's just been recently. 4 Q Do you own Kin? 5 A Yes. 6 Q Since when? 7 A Since the TDE. 8 Q Have you sold any of it? 9 A No. 10 Q And you -- as we discussed, you 11 currently live in Canada at the address you 12 provided? 13 A Yes. 14 Q Did you meet with lawyers to prepare for 15 today's deposition? 16 A Yes, I did. 17 Q When? 18 A Yesterday. 19 Q Where? 20 A Cooley's office here in Washington. 21 Q How long did you meet? 22 A Four hours, five hours. 23 Q In addition to that, you reviewed the 24 transcripts, right? 25 A That's correct.</p> <p style="text-align: center;">207</p>
<p>1 Q Have you done any work at all for Kik in 2 2019? 3 A In 2019. I don't -- I can't recall any. 4 Like, they might have gotten some calls about 5 something for clarifications, but I have done no 6 specific work for Kik. 7 Q Are you still in touch with 8 Mr. Livingston? 9 A I have spoken to him twice, probably, 10 since I've left. 11 Q What about Fred Wilson? 12 A No, I haven't spoken to Fred. 13 Q Paul Holland? 14 A No. 15 Q After leaving Kik back in 2018 -- 16 A Yes. 17 Q -- what have you been doing 18 professionally? 19 A Well, I took time off. I took a course 20 from Oxford on blockchain. And then I worked for 21 a company that put a major retailer's freight 22 management system on blockchain. And I've advised 23 an educational company on strategy and sale. And 24 then I've also just recently picked up a contract 25 with a tech company for doing -- basically, they</p> <p style="text-align: center;">206</p>	<p>1 Q Did you review documents? 2 A Did I review documents? 3 Q Yesterday during your preparation. 4 A Yes. 5 Q Ballpark, how many did you look at? 6 A I can't really say. Maybe 10 to 15. 7 Probably similar to what I looked at here. 8 Q And they refreshed your recollection? 9 A In some of the cases, yes. 10 MR. MENDEL: Can we go off the record, 11 please. 12 THE WITNESS: Sure. 13 MR. CADIGAN: Yes. 14 THE VIDEOGRAPHER: We're going off the 15 record. The time is 2:23 p.m. 16 (A brief recess was taken.) 17 THE VIDEOGRAPHER: We're back on the 18 record. The time is 2:30 p.m. 19 MR. MENDEL: The SEC passes the witness. 20 MR. CADIGAN: We have no questions. 21 MR. MENDEL: Thank you, Mr. Heinke. 22 THE WITNESS: Thank you. 23 MR. MENDEL: Okay. We're done. 24 (Discussion off the record.) 25 THE VIDEOGRAPHER: We're off the record</p> <p style="text-align: center;">208</p>

Peter Heinke
11/22/2019

<p>1 at 2:30 p.m., and this concludes today's 2 deposition given by Peter Heinke. 3 (The deposition was concluded at 2:30 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">209</p>	<p>1 ERRATA SHEET 2 Deposition of Peter Heinke, Vol. 1 3 Date taken: November 22, 2019 4 Case: SEC vs. Kik Interactive, Inc. 5 PAGE LINE 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 CHANGE: _____ 2 REASON: _____ 3 4 CHANGE: _____ 5 REASON: _____ 6 7 CHANGE: _____ 8 REASON: _____ 9 10 CHANGE: _____ 11 REASON: _____ 12 13 CHANGE: _____ 14 REASON: _____ 15 16 CHANGE: _____ 17 REASON: _____ 18 19 CHANGE: _____ 20 REASON: _____ 21 22 CHANGE: _____ 23 REASON: _____ 24 25 Signed _____ Dated _____</p> <p style="text-align: center;">211</p>
<p>1 CERTIFICATE OF WITNESS 2 I, PETER HEINKE, declare that I have read the entire 3 transcript of Volume 1 of my deposition testimony, or 4 the same has been read to me, and certify that it is a 5 true, correct and complete transcript of my testimony 6 given on Friday, November 22, 2019, save and except 7 for changes and/or corrections, if any, as indicated 8 by me on the attached Errata Sheet, with the 9 understanding that I offer these changes and/or 10 corrections as if still under oath. 11 _____ I have made corrections to my deposition. 12 _____ I have NOT made any changes to my deposition. 13 14 Signed _____ 15 PETER HEINKE (Volume 1) 16 Dated this _____ day of _____, _____ 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">210</p>	<p>1 REPORTER CERTIFICATED 2 3 I, Michele E. Eddy, Registered Professional Reporter 4 and Certified Realtime Reporter, Participating Member 5 of NCRA, do hereby certify that: Peter Heinke 6 appeared before me on Friday, November 22, 2019, was 7 sworn by me, and was thereupon examined by counsel; 8 that the foregoing is true and accurate to the best of 9 my knowledge, skill and ability; that the testimony of 10 said witness was taken and reduced to stenotype 11 writing before me; that the said transcript is a true 12 and accurate record of the testimony given by said 13 witness; that I am neither counsel for, related to, 14 nor employed by any of the parties to the action in 15 which this deposition was taken; and further, that I 16 am not a relative or employee of any attorney or 17 counsel employed by the parties thereto; nor 18 financially or otherwise interested in the outcome of 19 the action. 20 IN WITNESS WHEREOF, I have hereunto set my hand 21 this 2nd day of December, 2019. 22 23 _____ 24 Michele E. Eddy, RPR, CRR, CRI 25 Notary Public in and for the District of Columbia My Commission expires July 14, 2022</p> <p style="text-align: center;">212</p>